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CABINET GOVERNMENT IN FRANCE

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The general opinion among English and American political writers is that the French system of cabinet government is very nearly a régime of "parliamentary anarchy."[1] In recent years it has also been the object of severe attack by many French scholars, notably by Professors Duguit, Moreau, Barthélemy and Faguet, and by public men like Charles Benoist, Raymond Poincaré and others, who assert that while the cabinet system has been established by law, it does not exist in fact, but in its place is to be found a poor imitation of the true cabinet sytem of England, upon which that of France was supposed to have been modeled.[2]

[1] Compare the views of Bodley, *France*, vol. ii, bk. III, ch. 5; Bagehot, *The English Constitution*, 2d edition, pp. 47–52; Low, *The Governance of England*, p. 118; and Bradford, *The Lesson of Popular Government*, vol. i, ch. 15.

[2] On this point, see Duguit, "Le Functionnement du Régime Parlementaire en France," in the *Rev. Pol. et Parl.*, vol. xxv, pp. 363 et seq; Moreau, "Le Pouvoir Ministeriel," *ibid.*, vol. vii, p. 103; also his *Pour le Régime Parlementaire*, p. 308; Benoist, "Parlements et Parlementarisme," *Rev. des. Deux Mondes*, vol. 160, p. 583; also his book entitled *La Réforme Parlementaire;* Poincaré, *Questions et Figures Politiques*, pp. 93 et seq.; Thiebaud, "Le Crise du Parlementarisme" in the *Rev. Hebdomadaire*, May 2, 1908, p. 6; Ephraim, "Le Régime Parl. en Angleterre et en France," *Rev. Pol. et Parl.*, vol. vii, p. 125; Barthélemy, Le Rôle du Pouvoir Executif dans les Republiques Modernes," pp. 680 et seq.

One undoubted reason why cabinet government in France has not worked smoothly is to be found in the fact that it is not an indigenous institution. It was transplanted from the country of its origin where it had taken deep root and had developed to a high state of efficiency through a long process of evolution, and was suddenly introduced into one where the historical traditions, political habits and mental aptitudes of the people were very unlike those of the English. In the enthusiasm for English institutions which inspired the French liberals after the close of the Napoleonic wars, they ignored these differences of conditions and introduced the English system, largely because it "had given England a century and a half of prosperity."[3] There were a few, however, who, like Royer-Collard, pointed out that English institutions were unsuited to French conditions, and for this reason they opposed the introduction of a system of government modeled upon that of a country in which such dissimilar conditions existed.[4]

Moreover, the cabinet system which the French introduced was a rather inperfect copy of the English model. While the charter of 1814 declared the king to be irresponsible and the ministers responsible, there was no provision requiring the countersignature of a minister to the royal acts, nor was the character of ministerial responsibility defined, that is to say, no distinction was made between the criminal and political responsibility of the ministers.[5] Furthermore, the right of interpellation followed by debate and motions of confidence or censure was not recognized by the charter, and the actual rôle played by the French king in the government was incompatible with the normal functioning of the true parliamentary régime. He was not content to play, like the English King, the part of an impartial arbiter, but insisted

[3] Compare Benjamin Constant, *Cours de Politique Constitutionnelle*, vol. i, p. 469.

[4] "If you wish to introduce the English government into France," said Royer-Collard, "give us the physical and moral constitution of England, make the history of England our history and put into our political balance a powerful and honored aristocracy." Quoted by Barthélemy, *L'Introduction du Régime Parlementaire en France*, p. 17.

[5] Michon, *Le gouvernement Parlementaire sous la Restauration*, pp. 33–34.

upon having a personal policy, the exercise of which frequently brought him into conflict with the chambers. Although it was admitted that the ministers must have the confidence of the parliament, their tenure, in fact, was largely dependent upon the will of the crown.

Finally, France, then as now, lacked the two-party system such as existed in England, and consequently the ministries were constituted by coalitions and were, as a result, unstable and short lived.[6] With the advent of the July monarchy, the preponderance of authority was shifted from the crown to the parliament and the control of the chambers over the ministers became more effective. The crown was now reduced to the rôle which M. Thiers assigned it in his well known aphorism: "The king reigns but does not govern."

The constitutional laws of the third republic provide the necessary paraphernalia of cabinet government, the essential feature of which is a politically irresponsible titulary of the executive power, whose official acts must be countersigned by the ministers who are collectively responsible therefor to the legislature, and who have the right to be heard by the chambers.[7] The right of dissolution as a means of terminating conflicts between the legislative and executive departments—an essential part of the mechanism of cabinet government—is also provided for in the text of the constitution. Finally, custom has added the right of interpellation, which did not exist under the monarchy, and which does not exist in English parliamentary procedure in the form which it has acquired in France. The French constitution, however, makes certain deviations from the English system, which have profoundly affected the working of cabinet government in that country. Thus the power of dissolution can only be exercised with the consent of the senate and the senate cannot

[6] Cf. Dupriez, *Les Ministrés dans les Principaux Pays d'Europe et d'Amerique*, vol. ii, pp. 295–300.

[7] In France, the ministers have the *entrée* to both chambers and must be heard whenever they demand it, whether they are members or not. In England, on the contrary, ministers may appear only in the chambers of which they are members and, consequently, a minister may address the chamber of which he is not a member only through the medium of an under secretary of state.

itself be dissolved, although the constitution declares that the ministers shall be responsible to the chambers.[8] The necessity which the ministry is thus placed under of obtaining the consent of the upper chamber to dissolve the lower chamber for the purpose of appealing to the electorate, and the demand of the senate that the ministry shall be responsible to it as well as to the other chamber, in practice, add to the difficulties under which cabinet government in France is carried on.[9] Certain customs

[8] For the view that the government should have the power to dissolve the senate as well as the chamber, see Faguet, *Problèmes Politiques*, p. 45. Thus in 1896, at the time of the conflict between the two houses over the question of appropriations for the expedition to Madagascar, a dissolution of the senate, which refused to consent to the appropriations, would have been the most effective solution of the difficulty.

[9] The late Professor Esmein, arguing mainly from English and Belgian practice and from French practice under the monarchy (1814–48), defended the thesis that the ministers were responsible only to the chamber of deputies. If, he said, the senate cannot itself be dissolved, yet (with the assent of the president), it may dissolve the chamber of deputies and may overthrow a ministry it is not the equal but the master of the lower chamber. *Droit Constitutionnel*, 5th edition, p. 738). But the contrary view is maintained by Professor Duguit and the vast majority of French publicists and political writers. See especially, Duguit, *Droit Constitutionnel*, ed. of 1911, vol. ii, pp. 431 et seq.; Moreau, *Rev. du Droit Pub.*, vol., ix, pp. 79 et seq; Jules Simon, "Le Régime Parlementaire en 1894" in the *Rev. Pol. et Parl.*, fol. i, pp. 8 et seq; and Laffitte, "Lettres d'un Parlementaire" in the *Rev. Pol. et Lit.*, February 4, 1893, p. 151. They base their contention first of all, upon the language of the constitution which declares that the ministers shall be solidly responsible to the chambers. Thus says M. Laffitte, "The constitution of 1875 does not say that the ministers are responsible to the chamber; it says they are responsible to the chambers; the authors of the constitution knew what they wished to say and they said it in good French. They believed that in a democratic state the two chambers ought to be the expression of the general will; this being so, they desired that the cabinet should be responsible not to one half of the parliament, but to the parliament entire. And if this rule were freely observed, there would be fewer ministerial crises. Suppose that tomorrow the ministry, beaten in the chamber by a half dozen votes, but assured of a strong majority in the senate, should refuse to resign. Perhaps public opinion would be taken by surprise and more than one person would cry 'parliamentary coup d'etat;' but I maintain that the ministry that should do this would be within the letter and spirit of the constitution and I defy anyone to prove the contrary from the text." The argument from English practice and from French practice under the monarchy is, they maintain, inadmissible because in each case the upper chamber does not rest upon an elective basis. The French senate, they point out, has equal powers of legislation with the chamber of deputies; it may address questions and interpellations to the ministers and may vote orders of the day, of

and political practices, as well as defective constitutional arrangements are also partly responsible for the rather unsatisfactory working of cabinet government in France.

Thus the power of dissolution, everywhere regarded as a counterpart of the political responsibility of the ministers, although provided for in the text of the fundamental laws, has, in consequence of the unwise, if not the unconstitutional, exercise of it by MacMahon at the time of the *seize-mai* crisis of 1877, fallen into discredit and can now hardly be regarded as a part of the mechanism of the French parliamentary régime. It is, however, a necessary means of preventing the legislature from imposing upon the government a policy which does not have the approval of the country and of settling conflicts between the ministry and the legislature through an appeal to the electorate; in short, it is a means of keeping the executive and legislature in accord and of preventing the legislature from misrepresenting the country.[10] During the period of the Restoration and the July Monarchy it had the support of the most distinguished liberals like Benjamin

confidence and censure under exactly the same conditions as the chamber may. Finally, they argue that it was clearly the intention of the authors of the constitution to give these two chambers equality of power and the great republican leaders of the time such as Jules Simon and Gambetta so understood it. In practice, ministers have several times resigned in consequence of hostile votes of the senate, the last instance occurring in 1913, following the rejection by the senate of the electoral reform bill passed by the chambers in July, 1912. In 1896, the Bourgeois ministry was practically forced to retire because the senate refused to vote an appropriation for the expedition to Madagascar so long as the existing ministry remained in power as it insisted on doing "in violation of the constitution." But the issue of this notable conflict, says Esmein, was not decisive. "It showed," he says, "that the senate has the *power* to compel the resignation of a ministry but it did not demonstrate that it had the *right* to do so." Whatever may be the correct legal interpretation of the constitutional power of the senate to unmake ministries, there is no doubt as Jules Ferry once remarked, that it may create a situation in which it is impossible for them to govern. In this connection it may be remarked that the chamber of deputies has many times overthrown cabinets that had the entire confidence of the senate. Two notable examples were the reversal of the Gambetta ministry in 1882 and the ministry of Jules Ferry in 1884.

[10] Compare Esmein, *op. cit.*, p. 138. Under the system of parliamentary government, observes M. Esmein, the power of dissolution is natural, legitimate and almost necessary. See also Duguit, "Le Fonctionnement du Régime Parlementaire en France" *Rev. Pol. et Parl.*, vol. xxv, p. 367.

Constant,[11] and was frequently resorted to for the settlement of conflicts between the chamber and the ministry.[12] It has, of course, been frequently exercised in England where it is regarded not as a dangerous weapon against the liberties of the people but as an indispensable condition of responsible government[13] and even in Germany where the system of cabinet government does not exist, it has been resorted to a number of times since the establishment of the Empire to ascertain the will of the country upon important questions of public policy.[14] But, strangely enough, the French republicans of today regard the power of dissolution as a monarchical institution capable of being employed against the rights and liberties of the people. Resorted to but a single time since the establishment of the third republic, (May 16, 1877), it has fallen into desuetude and in all likelihood an intimation from the executive of an intention to dissolve the chamber with a view to taking an appeal to the country would be followed by a general cry of "dictator" or "coup d'état."

Another custom which has tended to distort the cabinet system of France and to interfere with its normal functioning is the excessive rôle which the chambers insist upon playing both in legislation and in administration. As the veteran deputy, Charles Benoist, has pointed out in a critical study of the French system, true parliamentary government implies a certain equilibrium among the several organs and whenever one of them becomes so strong as to destroy this equilibrium, the system becomes a "deformation and a corruption" of the real parliamentary system."[15]

The general opinion among the highest authorities on the subject is that the true rôle of the chambers, where the cabinet system

[11] *Reflexions sur les Constitutions*, p. 30.

[12] Eleven times under the Restoration and six times during the July monarchy. See Matter, *Dissolution des Assemblées Parlementaires*, pp. 66, 82.

[13] Since 1783 there have been 29 dissolutions of the English House of Commons. See Todd, *Parliamentary Government in England*, vol. i, p. 162, and Low *Governance of England*, pp. 107–109.

[14] Since 1873 the German Reichstag has been five times dissolved for the purpose of consulting the electorate.

[15] "Parlements et Parlementarisme *Rev. des Deux Mondes*, vol. 160, pp. 574, 583.

prevails, consists mainly in controlling the ministers and compelling them to resign only when their general policies no longer meet the approval of the legislature.[16] Thus in England where the cabinet system has attained the greatest success, the house of commons is guided and directed by the ministry; indeed, as Sidney Low remarks, English cabinets have in recent years rarely been turned out by the House for what they have done.[17] He emphasizes what Bagehot[18] many years ago maintained, that the principal function of the house is selective, that is, the making and unmaking of cabinets rather than itself legislating and administering. In France, the respective rôles of the chambers and the ministry are reversed; the ministry instead of guiding the legislature is itself controlled and directed by the legislature not only in respect to questions of general policy, but as regards subsidiary matters of legislation and administration. Not content with depriving the chief of state of his constitutional prerogatives and reducing him to the position of a figure head,[19] the French chambers insist upon throwing the ministers out upon trivial questions, and this notwithstanding the constitutional prescription that they shall be responsible only for their *general* policies. What is more regrettable, they have more and more shown a disposition to meddle in the details of administration by dictating appointments and promotions, giving orders and interpellating the ministers upon petty incidents which arise in the course of the administration. M. Faguet, an incisive critic of French parliamentary customs, remarks that the chambers not only legislate and control, but they also govern and administer. It has come to pass, he says, that France is governed eight months of the year by parliament, and only four months by the ministers.[20]

The French ministers, says Professor Moreau[21] can hardly be

[16] Compare Duguit, "Le Functionment du Régime Parlementaire," *Rev. Pol. et Parl.*, vol. xxv, p. 367.

[17] *The Governance of England*, p. 81.

[18] *The English Constitution*, ch. 6.

[19] Compare my article on "The Presidency of the French Republic" in the *North American Review* for March, 1913, pp. 334-349.

[20] *Problémes Politiques*, p. 8; see also his *Cult d'Incompetence*, ch. II.

[21] "Le Pouvoir Ministeriel," *Revue Politique et Parlementaire*, vol. 7, p. 103.

called "the government," they go through the forms and gestures, they appoint functionaries, regulate affairs and issue decrees, but they do not govern, if by government we understand the direction of the nation to a common end. Cabinet government in France, he declares, is reversed, the head being on the ground and the feet in the air, the chambers governing instead of administering and directing the ministers instead of being guided by them.[22] This false appreciation of the respective rôles of the chambers and ministers, said M. Lebon, writing in 1894 is the fundamental cause of the legislative sterility which has characterized the operation of the French parliamentary régime in recent years.[23]

One of the worst forms of abuse which the interference of the chambers has taken in recent years is that of indiscriminate interpellation of the ministers. Originally intended as a form of procedure for interrogating the ministers upon their general policies and of calling them to account, it has degenerated into a means of harassing them and of consuming the time of the legis-

[22] Many other French writers have dwelt upon the consequences of the increasing tendency of the chambers to depart from their true rôle and to interfere in the ordinary administration. M. Laffitte (*Le Suffrage Universel*, ch. 4) emphasizes the unfitness of the chambers for governing and administering. In recent years, he adds, one might almost ask if there is a government and if so where is it. So great has become the practice of the deputies in meddling in the affairs of the ministers, and particularly in respect to appointments, promotions and removals, that according to M. Sabbatier (*Rev. Pol. et Parl.*, Nov. 10, 1911, p. 204) the term "parliamentarism" no longer describes the French system; the true name, he says, should be "deputantism." Compare also Spuller, "Quatorze mois de Legislature" in the *Rev. Pol. et Parl.*, vol. ii, p. 3; Eichthal, "Nos Moeurs Parlementaires," *Rev. Pol. et Parl.*, vol. vi, pp. 136–140; Duguit, article cited p. 367; Ferneuil, "Nos Moeurs Parlementaires" (1895); and Laveleye, "Le Rég. Parl," *Rev. des deux Mondes* Dec. 15, 1892. "The chamber of deputies," remarks M. Barthélemy, *Pouvoir Executif dans les Républiques Modernes*, p. 681, "is not content to be a mere collaborator with the executive power in the formulation of general rules of policy; it wishes to govern alone, and this is not all: it wishes to administer, it descends into the smallest details of the execution of the laws—it does not counsel, it ordains, it is the supreme dictator of the administration. Its domination extends to all affairs, all interests, all functionaries, all citizens. We have reached the terminus of what Benjamin Constant called the 'horrible route of parliamentary omnipotence.'"

[23] Réforme Parlementaire," *Rev. Pol. et Parl.*, vol. ii, p. 238.

lature in the discussion of secondary and even trivial matters which in the English house of commons would be regarded as quite beneath the dignity of the chamber. Yet the chamber of deputies has firmly refused to consent to an amendment of the rules restricting the privilege of interpellation in the interest of a more expeditious legislative procedure. "There is no petty incident of local police, no appointment of a functionary, however insignificant, "says Professor Duguit, "that is not made the subject of an interpellation." Ministers have been compelled to submit to interpellations on such trivial matters as the remarks of a university professor to his class, the sermon of a country *curé*, an ordinance issued by the mayor of a village, what some official was reported to have said about a European alliance, and similar matters. Such a practice, Professor Duguit goes on to say, "gives rise to continual intrigues, combinations in the lobbies which make and unmake artificial and ephemeral majorities; the ministers, never sure of their future and continually absorbed by the fear of an interpellation and of a possible downfall, are concerned only with recruiting their strength from among their friends in parliament by distributing among them the government favors at their disposal. This is not true parliamentary government, but its caricature."[24]

[24] From 1902 to 1906 there were 262 requests in the chamber of deputies for interpellations and of these 140 were actually discussed. See Onimus, *Questions et Interpellations*, p. 91. Bloch (*Régime Parlementaire*, p. 83), gives somewhat different figures. From the time of the meeting of the present parliament in June 1910 to November 1911, 232 interpellations were addressed to the ministers, of which 108 had been discussed by the later date. See *Etat des Travaux Legislatifs de la Ch. des Deps., ses. extra de 1911*, p. 90. A writer in the magazine *Lectures Pour Tous* for November, 1901 (p. 106) states that a single ministry was subjected to 115 interpellations and 291 questions during its brief existence of less than two years.

The Casimir-Perier ministry was subjected to 22 interpellations and 26 questions within a period of less than six months. Five different interpellations were addressed to the Combes ministry in regard to the expulsion of an Alsatian priest —See an address by the president of the chamber, Jan. 10, 1893. (*Rev. Pol. et Lit.*, Apr. 15, 1893, p. 472) where it is stated that 580 hours, amounting to one-third of the time of the chamber had been taken up in the discussion of interpellations since the beginning of the existing parliament.

It is the opinion of some authorities on French parliamentary procedure that nine-tenths of the interpellations daily addressed to the ministers could be disposed of as simple questions upon which a short dialogue between the ministers and the interpellating member would be sufficient, as is the practice in the house of commons, without the necessity of general debate, followed by a vote of censure or of confidence.[25]

The continual harassing of the ministers by means of interpellations upon petty matters, as though it were a sort of pastime, and the frequent upsetting of cabinets upon orders of the day resulting therefrom afford a striking contrast to the attitude of the English house of commons toward the ministry. The house of commons trusts the ministers, does not bombard them with daily interpellations upon unimportant matters and manifests no disposition to control them except in respect to policies of general interest. "The principle of parliament," observes Bagehot, "is obedience to leaders; it chooses its leaders and then follows them, what they propose, it supports." That of the French chamber toward the ministry, on the contrary, is one of distrust and suspicion: it refuses to follow their leadership or to allow them a free hand in the conduct of the government, and exercises over them a surveillance and control which is no part of the English practice.

Another extra-constitutional reason alleged for the unsatisfactory working of the cabinet system of France is to be found in the somewhat disorganized and undisciplined state of political parties.

[25] Discussing the abuses of interpellation in the French parliament, M. Faguet asks: "What do the members do during the eight months of the parliamentary session? Like the man in the comedy, they do nothing, although they act; they make an enormous fuss without any results. Their performances are a sort of gymnastics. They interpellate, they speak, they cry, they vociferate upon daily affairs—the results are deplorable: instability of the executive power, ephemeral and rapidly dissolving ministries—one every six months as a rule.—Their thoughts are absorbed and their time consumed in manoevuers, the making of combinations and the devising of schemes to avoid being overthrown, in answering interpellations on trivial matters or in listening to appeals from deputies for favors. *Problémes Politiques*, p. 17. For further discussion of this subject, see Onimus, *Questions et Interpellations* (1906); Bloch, *Réjime Parlementaire* (1903), pp. 82-83; Poincairè, *Questions et Figures Politiques*, pp. 87 et seq.

Experience has demonstrated that the parliamentary machine will not operate smoothly where the two-party system is lacking. The representatives in the chamber to which the ministry is responsible must be organized into two clearly differentiated and well disciplined parties, between which the government oscillates from time to time, each party being united upon a common program of national policies and each having its acknowledged leaders who are obeyed and followed by the rank and file.[26] "Parliamentary government would yield as good results in France as in England," declares one French writer, "if the voters would only send to the parliament a homogeneous and disciplined majority capable of following a leader."[27]

In the *Palais Bourbon* where the deputies held their sessions, one notes the absence of the long aisle which in the house of commons separates two compact homogeneous parties. The seats in the French chamber are arranged in the form of a hemicycle as if especially designed for the accommodation of a French assembly. In the place of two parties facing each other, there are a dozen parties, groups, sub-groups and coteries of a more or less incoherent character ranged from right to left, beginning with the most reactionary group and ending with the ultra radicals, hardly any two of which have a common program or any solidarity of political interests.

Mr. Bodley affirms that the "chronic inability of the French to produce the two-party system is in itself a sure sign of their incapacity for parliamentary government."[28] The truth of this rather severe judgment may be doubted, but there is no difference of opinion among the French writers that the group system as it

[26] On the two-party system as an essential condition of cabinet government, compare Moreau, "Pouvoir Ministeriel" in the *Rev. Pol. et Parl.*, vol. ii, p. 103, also his "Pour le Régime Parlementaire," p. 106; Duguit, *Rev. Pol. et Parl.*, vol. xxv, pp. 370–371; Lowell, *Government and Parties in Continental Europe*, vol. i, p. 71; Low, *Governance of England*, pp. 118 et seq; Bagehot, *The English Constitution*, 2d., ed., p. 47; Bodley, *France*, vol. ii, p. 176; Laffitte, "Lettres d'un *Parlementaire*," *Rev. Pol. et Lit.*, Jan. 21, 1893, p. 73; and Saleilles, "Develop. of the Present Constitution of France," *Annals, Amer. Acad. of Pol. and Social Science*, vol. vi, p. 65.

[27] Cf. Ephraim, "Le Régime Parlementaire," *Rev. Pol. et Parl.*, vol. vii, p. 592.

[28] *France*, vol. ii, p. 176.

exists in France is a serious obstacle to the smooth functioning of the parliamentary machine.

The chief reason for the failure of the French to organize into national parties is that national issues with them are too often subordinated to local issues. The situation has been well described by Professor Moreau in the following words: "The ministers are dependent upon the deputies; the deputies are dependent upon the local electors, and the electors having more solicitude for the local interests than for the general interests, it happens that the legislative elections are made upon a program limited to local questions, because the deputy is in an excellent position to obtain the solutions. Desirous of retaining his seat, he concerns himself only with the local interests, he persecutes the ministers and bargains with them; the ministers absorbed with this traffic are diverted from the serious study which the affairs of the state demand of them. The consequence is, national parties cannot be formed among electors and deputies think only of municipal interests."[29]

The remedy for this evil, according to the great majority of French publicists and political writers lies in the abolition of the system of choosing deputies from petty single-member districts and the substitution of the general ticket method ("Scrutin de liste),"[30] but the latter system has been more than once tried in France (the last time from 1885 to 1889), and experience with it was not such as to convince one of the efficacy of the proposed remedy.

Several notable attempts have been made by strong and popular premiers to create a true government party in the place of the more or less artificial and ephemeral coalitions which are so largely responsible for the brevity and uncertainty of the ministerial tenure. Thus in February, 1911, M. Briand, then president

[29] *Pour le Réjime Parlementaire*, p. 319. Compare also Laffite ("Lettres d'un Parlementaire," *Rev. Pol. et Lit.*, May 13, 1893, p. 604) who emphasizes the fact that in France elections are made upon personalities and abstractions, that each candidate frames his own "profession of faith" and that often candidates belonging to the same party have conflicting programs.

[30] For further development of this point, see my article on "Electoral Reform in France" in the *American Political Science Review* for November, 1913.

of the council, declared in the course of an interpellation of his ministry that he would be satisfied only with a majority composed of deputies representing the four groups of the left, namely, the democratic left, the radical left, the radical socialists, and the republican socialists. At the same time, he announced that he would not accept the support of deputies from other groups than those mentioned, believing that the exclusion of "outsiders" would tend to unify and solidify into one homogeneous party the several groups which collectively constituted the majority. "The government," he said, "in order to have a stable majority, must be composed not of men who are grouped or brought together by the hazard of circumstances, but of men united among themselves and attached to the government by an affinity of ideas and who are resolved to pursue in a strict spirit of solidarity and of reciprocal confidence the attainment of a common end."[31] But M. Briand's effort failed and he resigned. Waldeck-Rousseau and Émile Combes before him had essayed a somewhat similar task, but they, too, failed.[32]

In France, where there is no homogeneous majority with its recognized leaders, the difficulty of selecting a premier is naturally often very great and not infrequently the post is tendered to half a dozen men in succession before one is found who is able to succeed, when he has once accepted the charge. The out-going ministry has in all probability been overthrown by a combination of groups, maybe of radicals and conservatives, with little or nothing in common, yet some of them having leaders with equal claims to the premiership but the appointment of no one of which would be acceptable to the other groups. Naturally, under such circumstances, the president of the republic does not know where to turn; he must have advice and the custom has accordingly grown up of consulting the presidents of the chambers[33] and lately the advice of the chiefs of the various republican groups has also been sought.

The right of the president of the council, as the French premier is officially styled, to select his colleagues was definitely settled in

[31] See M. Briand's letter in the *Revue du Droit Public*, vol. 28, p. 332.
[32] See Esmein, *Droit Constitutionnel*, 5th edition, p. 210.
[33] This practice has been followed since 1879.

1877 when MacMahon's appeal to be allowed the privilege of choosing the ministers of foreign affairs, of war and marine was firmly and successfully resisted by Dufaure, who had accepted the presidency of the council.[34] If the task of the chief of state in finding a premier is beset with difficulties, that of the premier in choosing his colleagues is infinitely more so. There is no majority in the English and American sense with its recognized leaders to whom he may turn. He is under the necessity, therefore, of creating a majority through a judicious distribution of portfolios among a certain number of groups so that each member will bring to the support of the cabinet a body of adherents. Since the groups often have little in common, so far as relates to their views upon questions of public policy, the support which each brings to the cabinet may be indifferent, feeble, inconstant or subject to conditions.

During the exciting days of a ministerial crisis, the Parisian journals give detailed accounts of the hurried visits of the newly appointed premier to the houses of prominent politicians, of his interviews, pourparlers, overtures, solicitations and possible combinations, and each day there is a summary of his failures and successes. Sometimes his *demarches* are prolonged through a period of several weeks before the cabinet is finally completed;[35]

[34] In this connection, it may be remarked, however, that the French president of the council is not the head of the cabinet in the same sense that the English premier is. The latter official exerts an important control over his colleagues, directs them and may even dismiss them. He is, in fact, the political ruler of England. The French president of the council, on the contrary, is merely *primus inter pares* and has little power of control over his colleagues (Compare Dupriez, ii, p. 353). In short, the ascendency of the prime minister is not regarded as an essential element in the French parliamentary system. "In the whole English constitution," observes Marriott (*English Political Institutions*, pp. 83–84) there is nothing more characteristically English that the possession of this great function." If any French premier should attempt to exercise such authority, the cry of "dictator" would be raised, as Gambetta's career demonstrated.

[35] Thus fourteen days were consumed in 1898 in constituting a ministry following the downfall of the Méline cabinet. The circumstances under which this cabinet was selected may be described here with some detail, since they fairly illustrate the difficulties under which French ministries are formed. On June 7, President Faure, after having consulted the presidents of the chambers, invited M. Ribot to form a cabinet of concentration. M. Ribot, after consulting various

not infrequently at the last moment, after the list has been sent to the *journal officiel* for publication, the combination is upset by withdrawals.

Occasionally special difficulties are encountered in finding a man who is willing to take a particular office, for refusals to accept cabinet portfolios in France, strange as it may seem, are much more frequent than in England owing to the fact that French cabinets are the results of combinations and often politicians who are invited to become members refuse because certain persons

political leaders, informed the president of the failure of his efforts. M. Sarrien was then summoned to the Elysée and entrusted with the task of forming a cabinet of conciliation. After consulting with various members of the radical and progressist parties, he consented to undertake the task. But the demand of the progressists that the portfolio of the interior should be given to one of their number caused the combination to fall through. M. Sarrien made an official announcement that in consequence of the withdrawal of support that had been promised him by certain persons belonging to the progressist party, it was impossible for him to form a cabinet under the conditions. The president thanked him for the efforts he had made and after having again consulted the chambers, confided to M. Peytral the mission of forming a new cabinet of conciliation. After consulting a number of political men, he went to the Elysée and informed the president that he would accept the task. After interviewing certain members of the radical and progressist parties, he offered the portfolio of war to General Cavaignac. But after the ministry had been made up, the proposal of M. Peytral to give the portfolio of under secretary of state to a member of the radical socialist party caused the break up of the combination, and he was obliged to ask the president to relieve him from the task. M. Henri Brisson was then summoned to the Elysée and charged with constituting a ministry, which he succeeded in doing after some days. For the facts regarding this ministerial "crisis" see Muel, *La Septiéme Legislature*, (1898–1902), pp. 7–11. Another example of the kind was afforded by the crisis of 1894 following the downfall of the Casimir-Perier ministry. President Carnot after the customary interviews with the presiding officers of the chambers summoned M. Lèon Bourgeois to the Elysée and asked him to form a cabinet. After a "profound examination" of the situation, he declined the honor. M. Dupuy was then summoned, but after two interviews, it was agreed that the situation indicated the choice of someone else. Senator Peytral was next summoned to the Elysée, but he declined the honor. M. Brisson was next offered the mission, but he asked to be excused. M. Bourgeois was then resummoned and urged to undertake the task of constituting a ministry, but again he refused. Again the President summoned M. Dupuy and made an appeal to his devotion and patriotism. Finally he consented, but in his *demarches* for colleagues he encountered great difficulties, the portfolio of finance being offered to four different men in succession before it was accepted.

have been included or others have been excluded or they insist upon conditions which cannot be admitted.[36]

The majority represented by a cabinet constituted in this fashion is naturally, unstable and weak since it rests upon no common principle but has been brought into existence merely through a distribution of portfolios. No policy can be carried out to which the representatives of an important group are opposed. Each new ministry inaugurates its assumption of power with a "declaration" containing a statement of the legislative and administrative reforms which it proposes to introduce, but it seldom remains in office long enough to fulfil its promises.

The history of parliamentary government in France is largely a narrative of "ministerial crises," of rapidly dissolving majorities and of unceasing conflict between the chambers and the government. It is this more than anything else which distinguishes the parliamentary history of France from that of England. Since Lord John Russell's cabinet took office, in 1846, sixty-seven years ago, twelve different men have held the post of prime minister in England; France, on the contrary, has had as many presidents of the council since 1900. Since 1873 when the third republic was established, France has been governed by fifty different ministries, not counting those that were reappointed by incoming presidents of the republic, whereas England has had only eleven. During these forty years six different prime ministers have governed England: Beaconsfield, Gladstone, Salisbury, Balfour, Campbell-Bannerman and Asquith; while France has had as many presidents of the council within the last five years (Clémenceau, Briand, Monis, Caillaux, Poincaré and Barthou, and Dumorgue). Since 1870, forty-seven different politicians have presided over the ministry of the interior; thirty-one over the ministry of foreign affairs; thirty-eight over the ministry of

[36] For example, the portfolio of foreign affairs in the Monis cabinet (1911) was offered to four different men in succession. It was first offered to M. Ribot who declined to accept it. It was then offered to M. Poincaré, who conditioned his acceptance upon the inclusion of M. Millerand in the cabinet. It was then tendered to M. Deselves who declined for certain reasons. Finally it was offered to M. Cruppi who was won over by the arguments of his colleagues.

war and thirty-eight over the ministry of marine.[37] During that period Germany has had but twelve ministers of war and England still fewer.[38]

The average tenure of French cabinets under the third republic has been less than eight months. Only four of the fifty ministries since 1873 held power for a longer period than two years,[39] while most of them were in office for only a few months. Only one of the last seven ministries had a tenure exceeding six months.[40]

One result of the system of "kaleidoscopic ministries" is that a large number of politicians of mediocre ability, who in England would not be regarded as fit for ministerial office, pass through the cabinet and have their turn at governing. Naturally under such circumstances it does not mean much to be a minister in France and a politician who has not at some time or another occupied for a brief interval one of the stately official residences provided for the ministers, is not highly regarded by his constituents.[41]

[37] I have compiled the above statistics from Muel's *Les Ministères de la Troisième Republique.*

[38] The Czar Alexander III is said to have once made the following remark to M. Hanotaux: "During the last sixteen years, the French minister of foreign affairs has been changed fifteen times, so that one never knows if one can rely on any real continuity of French foreign policy" Vizetelly, *Republican France*, 1870–1912 p. 432. This forms a striking contrast to the history of the foreign office of Russia, where only three different men occupied the post of foreign affairs between 1813 and 1895, a period of 82 years.

[39] They were the ministries of Jules Ferry (2 years, 1 month and 13 days); Méline (2 years and 2 months); Waldeck-Rousseau (2 years, 11 months and 16 days) and Clémenceau (2 years, 8 months, and 26 days). Occasionally an individual minister may hold office for a longer period. Thus Delcassé held the portfolio of foreign affairs for seven consecutive years and was only forced out by the demands of Germany, but this example is quite unprecedented. See an article entitled, "Le Septennat de Delcassé" in the *Rev. Pol. et Parl.* vol. 46, pp. 532 et seq.

[40] Under the monarchy, ministerial instability was the rule as now, and few cabinets held office for a longer period than a year. Thiers' two cabinets (1836, 1840) remained in power six and seven months respectively; that of the duc de Broglie less than a year (1835–6); that of Guizot (1347) one year and that of Casimir-Perier (1831–2), one and a half years.

[41] Ex-ministers, "ministrables" as they are called in France are naturally to be found in large numbers in both chambers. Senator Freycinet, for example, has been a member of eleven different cabinets and the chief of four of them. See M.

For this reason, every deputy aspires to be a minister and if he retains his seat long enough, he may reasonably expect that his turn will come. This insatiable desire for cabinet office among the deputies explains to some extent the readiness with which they throw out ministries upon subsidiary matters, since it increases their own chances of being called into the ministry. To remove this temptation it has been proposed by Charles Benoist and others that deputies should be prohibited from being appointed to cabinet positions, since they have access to the chambers whether ministers or not.[42]

On the face of it, a system of cabinet government in which the cabinet members are mere *ministres de passage* would seem to possess few merits. Nevertheless, the French system is far from being a régime of parliamentary anarchy, as Mr. Bodley would have us believe,[43] and it is in fact characterized by a greater degree of efficiency and continuity than a superficial study of rapidly changing ministries would lead one to suppose. In the first place, a change of ministries does not necessarily, and in fact rarely does, involve a serious interruption in the continuity of the administration. In each ministerial department there is a permanent corps of highly trained superior functionaries upon whom the actual work of administration devolves and who do not ordinarily change with out-going ministries. In the second place, what the French call a "ministerial crisis" does not have anything like the importance and significance that a change of ministries has in England. In the latter country, the downfall of a ministry is followed by the ascendency to power of the opposition party, the appointment of an entirely new ministry, representing this party, and the inauguration of a new governmental policy. It means that the party to which the out-going ministry belongs no longer

Faguet's amusing and sarcastic remarks concerning "ministrables" in his *Problémes Politiques*, p. 10. In 1910 there were 33 ministers and exministers in the Senate alone.

[42] "Reforme Parlementaire," Introduction p. xxvii, and Ephraim, "Le Régime Parlementaire," etc. *Rev. Pol. et Parl.*, vol. 7, p. 134.

[43] "The parliamentary system in France," says Mr. Bodley, "has had one consistent result: ministerial instability with its corallary, governmental anarchy" *France*, vol. ii, p. 262.

has a majority in parliament and, presumably, no longer represents the country. A change of ministries in England, therefore, usually involves a complete reversal of policy; in France, on the contrary, the upsetting of a ministry does not necessarily, and in fact rarely does, mean that the party or combination which it represents has lost a majority in the parliament or in the country. Indeed the same majority which makes a ministry is usually the same majority which unmakes it. In fact, cabinet resignations are almost never the result of the issue of a general election as is the case in England, for dissolutions and appeals to the electorate upon ministerial policies are no longer resorted to in France. It is one of the curiosities of the French system of cabinet government that not one of the forty odd cabinets that have governed France since 1877 was ever directly condemned by the electorate at a general election.[44] They are retired as a result of hostile votes by one or the other of the chambers, without appeal to the country or without reference to the results of the regular parliamentary elections. It is absurd, therefore, to believe that the ephemeral majorities that throw out ministries every six or eight months possess the confidence of the country any more than the ministry does.[45] And here is to be found another peculiarity of the French system. In England, the idea has more and more taken root that the cabinet is *immediately* responsible to the electorate and only secondarily responsible to the house of commons, and in fact most of the recent English cabinets have resigned in consequence of hostile verdicts of the country rather than those of the representatives.[46] In France, on the contrary, the idea of

[44] A possible exception to this statement was afforded by the general elections of 1902, at which the policy of the ministry was an issue, and which was followed by the voluntary retirement of Waldeck-Rousseau.

[45] There have, of course, been exceptions to the truth of this general statement. Thus it was clear that the Caillaux ministry in 1911 had lost the confidence of the country and it took advantage of a minor "incident" to resign, although no appeal was made to the electorate.

[46] This fact has been emphasized by Sidney Low in his *The Governance of England*. "In our modern practice," he says, "the cabinet is scarcely ever turned out of office by parliament *whatever it does*" (p. 81). Again he remarks "that between 1867 and 1900 there were eight changes of government and in six of these cases ministers resigned, not because they were defeated in the house of

immediate responsibility to the country has made almost no headway in practice. As I have said, dissolutions are never resorted to and ministerial policies are rarely issues in the regular quadrennial elections. The only responsibility which French practice knows, therefore, is responsibility to the chambers.

Not only are French cabinets turned out by the chambers without appeal to the electorate and entirely without reference to the will of the country, but they are often overthrown upon subsidiary and even trivial matters that do not under any construction involve general policies. A few instances may be cited in illustration. The second de Broglie ministry was defeated in 1874 on a question of urgency. The Waddington ministry in 1879 was overthrown because the minister of war failed to take action against certain army officers for attending a royalist banquet. The Loubet ministry was forced out in 1892 because the minister of justice neglected to order the exhumation and performance of an autopsy upon the body of a certain individual charged with complicity in the Panama canal scandals. The Casimir-Perier cabinet was condemned in 1894 for refusing to allow certain employes of the state railroads to attend a labor union congress. The third Dupuy cabinet was overthrown in 1899 upon an order of the day which charged certain policemen in Paris with attacking a group of citizens who were "hurrahing" for the republic. The reply of the premier that the police had been first attacked by the rioters did not save the ministry and when the chamber adopted a resolution declaring that it would support only a government which would energetically defend republican institutions and maintain order, the ministry walked out of the chamber and resigned. Rouvier's last cabinet (1906) was upset in consequence of a minor debate over certain church riots, the unfavorable vote of the chamber being due rather to personal antagonisms than to any real hostility to the government's policy in respect to church inventories.

As I have pointed out in another part of this article, ministries are sometimes condemned upon interpellations in regard to petty

commons, but because the verdict of the constituences at a general election was decidedly against them. The power which determines the existence and extinction of cabinets has shifted from the crown to the commons and from the commons to the constituencies" (p. 101).

matters such as the dismissal of a functionary, the expulsion of a priest, some ordinance of a mayor or prefect, a speech delivered by some public official and similar "incidents" which have nothing to do with general policies, for which alone ministers are declared by the constitution to be responsible. Ministries have also frequently resigned voluntarily because of internal dissentions (e.g., those of Freycinet, 1880, and Briand, 1910), because they were not satisfied with the size of the majority by which they were sustained, or because the majority was partly recruited from the ranks of conservatives or reactionaries, or because the chambers disapproved of some minor act or omission of the government. In all such cases the retirement of the ministry did not involve a reversal of the general policies of the government if, indeed, it had any effect whatever upon those policies. The fact is, the French ministries have rarely been condemned for their general policies. Finally, in France, a change of ministries is ordinarily little more than a mere change of persons rather than of policies; often, in fact, it amounts to nothing more than a reconstruction of the ministry and a redistribution of the portfolios. As a matter of fact, there have been only seven cabinets since 1875 which did not contain some members of the preceding ministry. In seventeen cabinets, the premier was found in the out-going cabinet. In a number of instances, more than half the members of the new cabinet were taken over from the old. In three of them (those of Fallières, Goblet and Ribot), eight of the ten members held portfolios in the out-going ministry; there have been six ministries, each of which contained half a dozen members of the old cabinet; three which contained seven; seven which contained five and so on.[47] Cabinets in which as many as half of the portfolios are held by members of the out-going ministry may almost be said to constitute the rule. It thus happens that the French chamber will overthrow a ministry one day and the next day acclaim with enthusiasm and give its confidence to a new ministry, a majority of whose members belonged to the one condemned the day before and who were responsible wholly or in part for the policy which

[47] I have compiled these statistics from Muel's *Les Ministères de la Troisième République* and from *Les ministères Français (1789–1911)* a publication of the "Société d'Histoire moderne (Paris, 1911).

caused its downfall. Such is the strange working of the parliamentary régime in France.

If cabinet changes in France meant what they do in England, parliamentary government would have long ago broken down. But they do not; on the contrary, a careful study of the parliamentary history of the country will show that the great majority of ministerial changes have worked little or no interruption in the general policies of the government. Sometimes, indeed, they have produced greater efficiency in the carrying out of existing policies, as when cabinets have resigned in consequence of internal dissensions and were reorganized in such a way as to secure the added strength that comes from harmony and concert of opinion.[48] In a certain sense, the actual working of the French government has been characterized by a remarkable degree of stability and continuity of policy.[49] In reality, the same political party (the radical *bloc*) has governed the republic for the last twelve years; during this period there have been many cabinet changes, but no change of party, no swinging of the pendulum from conservatism to extreme radicalism, as has happened in England and other countries.

Those who, like Mr. Bodley, see in the French parliamentary system nothing but instability, incapacity and anarchy, do not get below the surface; they ignore the true test of governmental efficiency, namely, the results actually achieved. Judged by this standard, the French government has not failed. It maintains order today quite as effectively as the English government does; it administers justice and punishes crime with more dispatch than is done by most American state governments, and the output of legislation enacted by it in recent years in the interest of social reform has been very noteworthy and will compare favorably with that of any other European country.

[48] Compare on this point the views of Professor J. T. Shotwell in an article entitled, "The Political Capacity of the French," *Political Science Quarterly*, vol. xxiv, p. 119.

[49] "Really," says Professor Schapiro, "the French government has been the most stable of any in Europe for the same group has been continually in power for the last twelve years." "The Drift in French Politics," *American Political Science Review*, November, 1913, p. 385.

THE AUTHORITY OF VATTEL

II

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In a previous paper[1] the attempt was made to state Vattel's system of municipal and international jurisprudence, and to show in a general way the authority attributed to his treatise on international law. It remains for us to consider the technical rules of international law proposed by Vattel and thus to lay the basis for a critical estimate of the position to which his treatise is entitled among the classics of international law.

The rules of conduct which nations have voluntarily adopted for themselves, and which therefore constitute the law between them, may be divided, with regard to their intrinsic character, into two general classes: first, rules which define certain principles of moral conduct or which embody the recognition of certain fundamental rights of states, and secondly, rules which define the concrete application of principles to the practical relations of states. Chief of the rules defining principles of moral conduct is the rule of good faith between nations, which in its many applications pervades the whole field of international law. This rule of good faith is not merely an *a priori* conception deduced from the analogy between sovereign states as members of an international community and private persons as members of society; it is a rule of positive international law, accepted by nations as properly controlling their conduct, and appealed to by them in their diplomatic relations. Among the rules expressing the fundamental rights of states may be classed the principle of the equality of sovereign states, the principle of the right of self-preservation, of the sovereign jurisdiction of a state over the territory belonging

[1] *The American Political Science Review*, August, 1913.

to it, of the independence of the state in the administration of its domestic concerns. These rules, like those defining principles of moral conduct, are part of the positive law accepted by nations, whatever theoretical basis may be assigned them by the Grotian of school writers.

In contrast with the abstract principles of international law there is the large body of practical rules which have developed from the application of abstract principle to the actual intercourse of states. Thus the application of the rule of good faith to the status of war has developed the rule that conventions between the belligerent parties, armistices, truces, cartels, etc., the so-called "commercia belli," must be faithfully observed in spite of the fact that war itself is an extra-legal procedure. Again, the application of the abstract rule of the sovereign jurisdiction of a state over its territory gives us specific rules defining the jurisdiction of a state over its coastal waters, the right of a state to determine the status of foreigners resident within it, the jurisdiction of a state over its merchant vessels on the high seas, etc. Many of these practical rules are of the highest importance as involving an essential deduction from fundamental principles; whereas others are of secondary importance as involving rules of practical utility but not touching the vital interests of states.

The above distinction has been made for the purpose of facilitating the criticism of Vattel's exposition of the rules of international law. It is to be expected that, inasmuch as the essential relations of states within the family of nations have not changed in the period from 1759 to the present day, Vattel's statement of fundamental principles should remain a fairly accurate statement of the existing law of nations, whereas on the other hand it is natural to look for modifications in many of the practical rules of international law owing to the changed circumstances of international life. The increased volume of international commerce, the methods of modern finance, the facilities of modern intercourse, immigration to the new world, the changes in the methods and instruments of warfare, not to mention moral influences of one kind or another, have of necessity made their effect felt in enlarging on the one hand, or restricting on the other certain of

the rights and duties of nations. To do justice to Vattel, therefore, we must keep in mind the distinction between abstract principles of conduct which are more or less immutable, and the application of those principles to the concrete facts of life which change with the progress of the world.

In turning from the first book which deals with the nation or state in its individual character, to the second book, which deals with the nation considered in its relation to other nations we cannot but be struck with the words with which Vattel prefaces his statement of the mutual duties of nations. "My principles," he says, "are going to appear very different from the policy of cabinets, and to the disgrace of human nature many of those polished rulers of nations will ridicule the doctrines of this chapter. Nevertheless, let me state boldly what the law of nature prescribes to nations."[2] These words furnish us the key to an understanding of Vattel's position. He boldly cuts loose from the practice of nations and takes his stand upon the theoretical basis of the law of nature. It matters not whether states have as a point of fact actually observed such and such rules in their dealings with one another; international custom has of itself no binding force and cannot be appealed to as the source of an alleged duty or the justification of an assumed right. The great determining principle in international conduct is the conformity of a given act to the abstract law of nature. Thus instead of first ascertaining the actual practice of nations upon a given subject and then criticising that practice in the light of recognized principles of moral conduct, Vattel is satisfied with stating the abstract principle, and he often leaves us in doubt as to whether the principle was recognized by states at that day and, if so recognized, whether it was generally applied in their mutual intercourse.

With regard to the fundamental principle upon which modern international law is based, the independence and equality of sovereign states, Vattel's doctrine needs no amendment, although we may dispute the source from whcih he derives it. Nations, he says, are free and independent each of the other, because the

[2] Book II, §1.

men who compose them are by nature free and independent. While the citizens of the individual state have renounced in part that liberty which they possessed in a state of nature, the states themselves still retain it as a natural right.[3] In like manner, he says, since men are by nature equal and have the same rights and obligations, so states are by nature equal and derive from nature the same rights and obligations.[4] This *a priori* reasoning is unsatisfactory, but Vattel at least stops short of the modern idea frequently met with that independence and equality are inherent attributes of states arising from the very nature of the society existing between them. The facts are to the contrary. The states which recognized the supremacy of the Holy Roman Empire did not cease to be states, although on many points their sovereign jurisdiction was restricted in one way or another.[5] Nor would a law between nations become impossible merely because they entered into a federation of the loose type provided for in the articles of confederation adopted by the American colonies in 1781, or even one of a closer type such as that between the same states under the constitution of 1789.

That the equality between states is legal, not political, is clearly recognized by Vattel, as well as the rule that changes in the form of the government of a state do not affect its international position. The question of precedence, was, however, an important one in those days. Memories of the claim of the Holy Roman Empire to precedence among the states of Europe made rulers of the fourteenth and fifteenth centuries on their guard lest any undue show of courtesy should be interpreted as acquiescence in a claim of superiority. Likewise the title which a sovereign may properly assume is discussed by Vattel at considerable length. It is difficult at the present day to imagine the petty quarrels and jealousies which centered around the question of the honor due to this sovereign and to that, and the marks by which it should be distinguished. One instance cited by Vattel is the agreement between the plenipotentiaries of France and of the Empire at the

[3] Ibid., Preliminaries, §4.
[4] Ibid., §18.
[5] See T. J. Lawrence, *International Law*, 4th edition, pp. 119–120.

time of the treaty of Westphalia that "when the king and queen should write to the emperor in their own hand and accord him the title of *Majesty*, the emperor should make answer in his own hand and accord them the same title."[6]

What exceptions must be made to the fundamental principle of the sovereignty and independence of states? What circumstances will justify one state in intervening in the domestic affairs of another state? Vattel finds two principal grounds in justification of intervention: self-preservation, and the moral obligation of restraining wrong-doing. In the interest of self-preservation a state may violate the sovereignty of another state to prevent a threatened evil whether the danger be proximate or remote. Vattel lays down the general principle that "a nation has the right . . . . to anticipate designs against itself, though it must be careful not to attack another state upon vague and doubtful suspicions, in order not to become itself an unjust aggressor."[7] The indefiniteness of such a rule makes it unsatisfactory, but even at the present day it is admitted that it is "impossible to lay down a hard-and-fast rule regarding the question when a state can or can not have recourse to self-help which violates another state."[8] When the threatened evil is proximate there is less difficulty in determining the justice of intervention to prevent it. Vattel frames a case which would be answered in the affirmative today as in his time. After stating that it is unlawful for a state to commit hostilities upon the territory of a neutral state, he continues as follows: "On the other hand it is certain that if my neighbor offered an asylum to my enemies when they have been worsted and are too weak to escape from me, and if he allows them time to recover and to watch for an opportunity to attempt a new invasion of my country . . . . he justifies me in attacking them in his territory. This is what happens to nations which are not in a position to make their territory respected."[9] The violation of American territory by the Canadian

[6] Op. cit., Book II, §44, note.
[7] *Ibid.*, Book II, §50.
[8] Oppenheim, *International Law*, 2d edition, I, 186.
[9] Op. cit., Book III, §133.

government in 1837, when a British force crossed the Niagara river and captured the *Caroline*, would have been justified by Vattel, as it is by writers of the present day,

When the danger of the threatened evil is remote it is impossible to do more than to lay down certain general rules which may serve to guide the conscience of a state, but which are too indefinite to be of any practical value. Vattel sets himself resolutely to answer the "celebrated and most important" question whether intervention is justifiable in the interest of the balance of power. Can a state take up arms against another state on the sole ground that the latter is becoming inordinately strong? It is significant that Vattel realizes that governments have never hesitated to answer the question in the affirmative; it is only the moral aspects of the question which need be discussed. On the one hand, considering the question in the abstract, there can be no doubt, Vattel thinks, that a mere increase of power on the part of a foreign state cannot, alone and of itself, justify a state in taking up arms to resist it. But on the other hand, knowing that the possession of power is almost always attended by its abuse, Vattel is ready to infer from previous marks of pride and ambition in the conduct of the foreign state a sufficiently conclusive proof of future hostile intentions to warrant the neighboring state in taking prompt action, first to obtain securities against misconduct, and if these are not forthcoming, to anticipate the impending attack. "One may forestall a danger in compound ratio to the probability of the threatened evil and to its gravity." As an instance in point Vattel cites the coalition against Louis XIV in the war of the Spanish Succession.[10] Vattel thus endeavors to reduce the political principle of the balance of power to a legal basis, but after much discussion he can arrive at no more definite rule than that "the safest thing to do is to weaken a state which has disturbed the balance of power, as soon as a favorable occasion can be found and it can be done with justice (i.e. there must be ground for fearing aggression); or else by any honest means to prevent the state from arriving at so formidable a degree of power."[11] This is

[10] Op. cit., Book III, §44.
[11] Ibid., §49.

wholly unsatisfactory as a rule of law between nations, but even at the present day it is impossible for writers to do more than state the general principle of the necessity of the balance of power. The nineteenth century no less than the seventeenth and eighteenth centuries witnessed several wars and many alliances in the interest of the balance of power, and within less than a year international law has been found unable to furnish a basis for the adjustment of the balance of power in Eastern Europe. It is amusing to see how Vattel, who has always an eye to political as well as to moral issues, labors hard to prevent statesmen from thinking that the principles which he is advocating will tie their hands in the effective conduct of foreign policy.

Somewhat remotely connected with the above-mentioned forms of intervention is intervention in restraint of wrong-doing, even though the state which intervenes is not directly affected by the illegal act. Vattel justifies such intervention on the ground that if gross violations of international law are to go unpunished the peace and security of all nations will be endangered. Accordingly he asserts that "all nations are justified in resisting by force a state which openly violates the laws of the society that nature has established between them, or which directly attacks the welfare and the safety of that society."[12] Upon this principle the intervention of France or of Great Britain to prevent the partition of Poland could readily have been justified; indeed, it may even be said that intervention was obligatory upon them if they were not to be made accessories to the crime. In 1792 when the national convention issued a decree authorizing the French army to go to the assistance of those who were oppressed in the cause of liberty in all countries, Great Britain rightly treated the proclamation as a declaration of war.

Apart from the justification of intervention upon political grounds where the material welfare of the intervening state is involved, Vattel is ready to recognize a moral obligation to intervene based upon the duty of each state to contribute to the welfare of other states, in so far as it can do so without injury to itself.[13]

[12] Ibid., Preliminaries, §22.
[13] Ibid., Book II, §4.

Such an obligation, however, has no place in international law of the present day. Nor is it possible to maintain Vattel's general principle that a state may interfere between a sovereign and his subjects in favor of the latter when their constitutional rights are being denied them and their religious privileges restricted, nor his principle that "when affairs come to the point of a civil war, foreign powers may assist the party which seems to them to have justice on its side."[14] Both principles would open the way to arbitrary intervention which would undermine the fundamental law of the independence of states.

On the other hand intervention to prevent religious or racial persecution involving personal suffering, or to restrain excessive cruelties in warfare was often resorted to during the nineteenth century. It is common with authors to justify such intervention as being "in the interest of humanity," but it is difficult to see how that principle can be reconciled with the present system of international law which recognizes no higher authority than that of the separate states. A better ground would be that persecution for religious belief, etc. disturbs in a very real way the peace of mind of persons of similar religious convictions in other countries, and therefore becomes equivalent to an international nuisance. Vattel recognizes a right to intervene when persecution on account of religion has been carried to "intolerable excess,"[15] in accordance with his general principle of justifiable interference between a sovereign and his subjects.

Passing from the question of intervention to that of the responsibility of the state for the acts of its citizens we find Vattel defining clearly the circumstances under which a state is to be held responsible for the act of an individual citizen or of a small group of citizens. "As it is impossible," he says, "for the best regulated state, or for the most vigilant and absolute sovereign, to control all the actions of his subjects and to keep them on all occasions under the strictest obedience, it would be unjust to repute to the nation, or to the sovereign, all the faults of the citizens. But if the state or its ruler approve and ratify the act of the citizen, the

[14] Ibid., Book II, §56.
[15] Book II, §62.

injured party may then regard the state as the real author of the injury and the citizen as merely its instrument."[16] Then follows a statement of the duties of the sovereign towards fugitive criminals. There were no general treaties of extradition at that time, but Vattel is able to state that "murderers, incendiaries, and thieves are, at the requisition of the sovereign in whose territory the crime has been committed seized wherever found and delivered up to him for trial."[17] The context apparently makes the rule apply to persons who have committed a crime in a foreign country and escaped back to their own country, and in that respect the rule goes beyond the provisions of most extradition treaties of the present day.

Coming to the broad question of the jurisdiction of a state over the persons within its borders and over the territory subject to it we find that Vattel is, except in a few instances, fairly in accord with the modern principles of international law. After a rambling *a priori* argument which suggests the influence of Rousseau, Vattel adopts the *jus sanguinis* and expressly rejects the *jus soli*[18] as the test of citizenship, but he practically admits Great Britain's adoption of the *jus soli* when he says that "there are countries, such as England, in which the mere fact of birth within the country naturalizes the children of an alien." The subject of naturalization naturally leads Vattel to discuss the "celebrated question whether a man can abandon his country or the society of which he a member," this is, whether there exists a natural right of expatriation. Two cases are presented: the son of a citizen may, when arrived at the age of reason consider whether it suits him to join the society with which he is associated by birth, and if he decides in the negative he may leave it, but must compensate it for what it has done for him, an idea which Vattel says was expressed in the traites-foraines (emigration taxes). In the second case, where the son of a citizen on reaching maturity acts as a citizen, he impliedly adopts the citizenship of the state and can only thereafter abandon his country, if in so doing he does not

[16] Book II, §§73, 74.
[17] Ibid., §76.
[18] Book I, §212.

cause it serious injury. To abandon it in time of danger would be manifestly to violate "the social compact."[19] In addition to the qualified right of expatriation in the above mentioned case, a citizen has an absolute right to abandon his country (1) when it cannot furnish him with the necessary means of subsistence, (2) when the state fails absolutely to fulfil its obligations toward him [the character of which is not mentioned], and (3) when the state establishes laws, e. g., with regard to religion, to which the social compact does not oblige the citizen to submit.[20] These theoretical cases are of no practical value, but it must be remembered that the question of expatriation had not at that period the importance which it required in the nineteenth century when emigration from Europe to the new world took on enormous proportions. It is consistent with Vattel's democratic spirit that he denounces the "vicious custom" prevailing in certain countries a few centuries before his time by which a state could not admit to its citizenship the subject of another state.[21]

With respect to the exclusion of alien immigrants Vattel recognizes both the right of the state to exclude them absolutely, and the consequent right to impose conditions of admission. The subject is briefly disposed of, for the author was not living in an age when emigration from overcrowded countries and the quest for foreign markets and industrial concessions have made it practically impossible for a state to cut itself off from the outer world.[22] A curious instance of Vattel's fondness for discussing wholly imaginary situations is to be found in his discussion of the rights of an exile. An exile, he says, being still a man has a right from nature to dwell somewhere on the earth; but this right, while a necessary and perfect one in the abstract, is conditioned in its exercise by the permission of the foreign sovereign to enter his dominions, which may be refused for good reasons.[23] An exile might thus wander about the world with an abstract right to

[19] Ibid., §220.
[20] Ibid., §223.
[21] Ibid., §225.
[22] Book II, §§94, 100.
[23] Book II, §§229–231.

settle somewhere but without a concrete right to settle anywhere. The case is merely mentioned as an example of Vattel's failure at every point to distinguish between moral and legal rights and duties.

Vattel's discussion of the question of title to territory acquired by discovery and occupation reminds us in a striking way how different were the conditions under which his treatise was written from those prevailing at the present day. Vattel lived in an age when the great powers of Europe asserted claims to wide reaches of territory in the new world, the whole extent of which they did not pretent to have mapped out, much less to have settled. Yet here again we find him announcing what is practically the modern rule, that "the law of nations will not recognize the *ownership* and *sovereignty* of a nation over uninhabited lands unless it effectively occupies them, forms a settlement upon them or makes actual use of them."[24] The rule thus stated was not, it is true, generally observed at the time, and even as late as 1827 the United States asserted in the Oregon boundary dispute that by the occupation of the land at the mouth of a river the whole territory embraced by the river and its tributaries was brought under the sovereignty of the state.

Another question which illustrates the great gap between the international law of 1758 and that of the present day is the subject of international rivers. Vattel lays down a series of tests for determining to which of two co-riparian states the river which forms the boundary between them belongs.[25] Even as late as 1805 Lord Stowell admitted that such rivers might by prescription, prior settlement, cession or otherwise come under the exclusive jurisdiction of one of the riparian states.[26] At the present day they are the common property of the states through which they flow. Again, Vattel, following the doctrine of Grotius, holds that while a river may be subjected to the ownership and sovereignty of the state within whose territory it lies, yet other nations have a right of passage remaining to them from the primitive

[24] Book I, §208.
[25] Book I, §266.
[26] 3 C. Rob., 338-340.

community ownership of all property.[27] This right is based upon the principle that all nations have a right to the innocent use of the property of another,[28] and it cannot be restricted by the owner by the imposition of tolls, except in so far as such tolls are necessary to keeping the river navigable.[29] But inasmuch as the owner of the river is the one who has the right to decide whether a given use is innocent or not, the right left to others is of no practical value. At the present day international law does not recognize a right on the part of the nations to use a river which is the property of a single state. It does, however, recognize the principle of free navigation for all the world upon all the rivers of Europe (and several outside Europe) which either separate or pass through two or more states.

The subject of treaties between nations fills up six chapters of Vattel's treatise and in the opinion of the writer constitutes perhaps the most successful part of the whole work. The various kinds of treaties are explained at length, the obligations resulting from them, the sureties to be given for their observance, with detailed rules for their interpretation. Here again, however, Vattel discusses many points which have ceased to claim a place in modern text-books, such as the question whether it is permissible to make an alliance with those who do not profess the true religion,[30] and the question whether an alliance between two sovereigns stipulating for the mutual defense of their royal persons is binding in case one of the parties be driven from the throne by a revolution.[31] In other instances Vattel discusses purely moral issues, which, in the absence of a supreme court of the world to decide disputes between nations, can never be brought under the domain of international law in the positive sense of a law accepted by nations. Whether an alliance is binding when one of the allies enters upon an unjust war[32] can, as a statement of moral principle have but one answer; but until there is some supra-national

[27] Book II, §123.
[28] Book II, §127.
[29] Book I, §104.
[30] Book II, §162.
[31] Book II, §196.
[32] Book II, §168.

authority to decide when a war is to be pronounced unjust, the question must remain outside the field of positive law. There are, however, certain moral principles of an abstract character which by reason of their general acceptance by nations have come to form part of the body of international law. The rule of good faith between nations is a rule of positive law.

The chapter on the interpretation of treaties is an excellent statement of rules which, derived from Roman law and embodying sound common sense, may claim a qualified position within the body of international law. On the whole, Vattel's reasoning upon the moral issues involved in the making and observance of treaties is worthy of high praise and it is only when he occasionally endeavors to reconcile principle with common, but wrong, practice that room can be found for criticism.

Passing to the subject of war we find Vattel, like Grotius before him, discussing at length the "just causes of war." In his customary rôle of counselor he first draws a distinction between the grounds which justify war and the motives which may lead the state to undertake it. The chief grounds of justification are self-defense and the maintainance of one's rights. But granting that a state has sufficient justification, it must not go to war from motives of vengeance, hatred, or the desire of conquest, lest it thereby abuse the right which it possesses. Vattel thus leads us into the broad field of casuistry where it is hardly profitable for the international jurist to tread. At the present day it is generally agreed that it is beyond the scope of a treatise on international law to draw a distinction between just and unjust causes of war. The causes of war are so varied in character and involve so many complex motives that it is simply impossible to find any legal standard by which they may be measured. There are, it is true, certain rules of a purely abstract character, such as the right of self-defense, the right to obtain redress for injuries, which have a legal status in international law as being just causes of war, but when it becomes a question of applying these rules to a concrete situation arising between two nations, the problem is immediately raised above the domain of positive law into that of international morality. There are, indeed, certain cases of out-

rageous aggression, such as those of the later Napoleonic campaigns, which are declared unjust by the practically unanimous voice of the civilized world, and war in that instance might be called in the strict sense "unlawful" as well as unjust. But as a rule the balance of right and wrong is not so easily read, and in consequence, until the era arrives when international disputes shall be subject to a court of absolute jurisdiction, it is not possible to bring the causes of war under the domain of positive international law. As a confession of the practical inadequacy of his principles Vattel frankly admits that although a war cannot be just on both sides, yet owing to the fact that nations cannot presume to judge one another the war must be regarded as "lawful" on both sides, at least as regards its exterior effects.[33]

It would be tedious to discuss in detail the various rules laid down by Vattel for the conduct of war both as regards the instruments to be employed and as regards the position of non-combatants and the status of public and private property during the occupation of territory by the enemy. On many points the law of war has made marked advances in the century and a half since the publication of Vattel's treatise. These advances are not so much due a change in the principles upon which war is conducted as to a recognition of the necessity of providing for the concrete application of acknowledged principles to actual warfare. It is the object of such conventions as that adopted at Geneva in 1864, the principles of which have now been adapted to maritime war, to provide specific regulations defining the conditions under which a duty already recognized in principle shall be carried out. On the other hand one cannot but be struck with the high moral character of the rules advanced by Vattel, though he is often placed in an embarrassing position in his efforts to reconcile abstract principle with military necessity.

In the chapter on neutrality Vattel shows himself considerably in advance of his time. He is the first writer to explain clearly the two fundamental principles of neutrality: first, that a nation must, in order to remain neutral, refrain from furnishing either

[33] Book III, §40.

party with troops, arms, or anything which is of direct use in war. This is not the same thing as furnishing equal help to both parties, for, as Vattel justly observes, the circumstances of the war may make what is equal assistance not equivalent assistance. Secondly, in all that does not relate to the war the neutral state must show a complete impartiality towards both belligerents.[34] Unfortunately Vattel qualifies his general rule in such a way as to deprive it of part of its value. He holds that if a state has bound itself to give help to one of the belligerents under a defensive alliance entered into prior to the war, it can give the assistance (it must be "moderate") without abandoning its position of neutrality.[35] Moreover, Vattel holds that a neutral may make loans of money to one belligerent and refuse them to the other, the discrimination being justified by the principle that a nation has a right to lend its money "where it thinks it has good security."[36] The absurdity of such quibbles reaches its highest point when Vattel attempts to justify a nation in granting to one belligerent permission to levy troops within its territory, and in refusing a like permission to the other belligerent, on the ground that the neutral state "might have reasons" for confiding its troops to one belligerent rather then to the other.[37] Vattel as a Swiss is defending the Swiss mercenaries.

It has not been possible to compare all of the rules formulated by Vattel with the corresponding rules in force at the present day, but it is thought that a sufficiently extensive comparison has been made to illustrate a general criticism of the author's authority as a classic writer on international law. The fundamental principles of international law as they are set forth in Vattel's treatise have remained practically unchanged down to the present day. It is true that in many instances Vattel deduces these principles from the law of nature by a process of reasoning which has ceased to have a controlling authority upon the thought of jurists and statesmen; but the fact that the author draws from *a priori*

[34] Book III, §104.
[35] Book III, §105.
[36] Book III, §110.
[37] Ibid.

sources does not affect the practical value of the rules themselves. At the present day positive international law and ideal international law are sharply distinguished. The international jurist sees it his primary task to present a statement of the actual rules in force between nations whether or not those rules commend themselves to his sense of justice or not. His second task which is often worked out along parallel lines with the first, is one of criticism. Here it is his duty to examine and test the existing rule by a standard borrowed from the rules of justice both as generally recognized by men in the abstract and as applied by them in the practical affairs of public and private life.

It will have been observed from several of the illustrations of Vattel's doctrine that the author is not always consistent when he comes to apply his general principles to the concrete situations of international politics. He is found qualifying his principlees in such a way as to make it at times almost meaningless; he will condition his ideal rule in such a way as to make it fit in with established practice. In one instance, when discussing the balance of power, Vattel takes special pains to assure us that while an increase in the power of a neighboring prince does not give us in the abstract a right to make war against him, yet his misconduct in the past and the slightest act of injustice on his part in the present are sufficient to justify us in anticipating aggression and forestalling it. "This," Vattel says "will put statesmen at their ease and take away any reason for fear on their part, lest, by being too scrupulous in the observance of justice they are running the risk of being enslaved."[38] Such evasions are, perhaps, inseparable from the attempt to apply moral principles to the necessities of actual life.

But while there have been no radical changes in the fundamental principles of international law since the time of Vattel, the practical rules which represent the application of abstract principle to the intercourse of states have changed on many points. It is in this respect that Vattel's treatise has ceased to be of practical value for the statesman or the lawyer. Emigration

[38] Book III, §45.

from Europe to the new world has given rise to a qualified right of expatriation, commercial intercourse has given aliens a new status in foreign courts, the great rivers of Europe have been internationalized, non-political intervention in favor of citizens who have made investments in foreign countries has become a more important function of the state, while in the field of the laws of war and of neutrality the changes are innumerable.

It may be of interest to observe the opinion held of Vattel by a few of the more prominent writers on international law. Apart from mere eulogies there are several interesting criticisms. Wheaton, the distinguished representative of the United States in matters of international law during the first half of the 19th century, in introducing his elaborate exposition of Vattle's system of international law, quotes the words of Sir James Macintosh characterizing Vattel as a "diffuse, unscientific, but clear and liberal writer, whose work still maintains its place as the most convenient abridgment of a part of knowledge which calls for the skill of a new builder."[39] F. de Martens says that "the absence of well-founded principles, and numerous contradictions constitute the chief fault of Vattel. . . . . But we frequently find in his book shrewd and intelligent remarks upon various questions, a correct interpretation of the historical facts which he instances, and in general humane views concerning the relation of states in time of war."[40] Heffter says that Vattel's work, "although superficial on many points, has by its charming style and practical character won for itself a place in the libraries of statesmen beside the work of Grotius."[41] Rivier says that "although Vattel introduces many extraneous topics, international law obtained through him its place as an independent science, shook off the formalism of the Schoolmen and made its way into courts, embassies and cultured circles where it is still held in high regard in the form which he gave to it."[42] Nys quotes the following criticism from Laurent's *Etudes sur l'historie de l'humanité:* "We

[39] *History of the Law of Nations*, 182.
[40] *Traité de droit international*, i, 211, 212.
[41] *Le droit international*, 34.
[42] *Le droit international*, 449–450.

must not judge too severely the literature of international law during the 18th century; we can see from Vattel that it was in advance, and greatly so, of the ideas of the political world: and it was for the political world that Pufendorf, Wolff and Vattel wrote . . . . Vattel was the first to popularize the science, and this is the reason for the authority attaching to his name. If his work has been overrated, at least we must give credit to his high ideals: it is due to him that international law left the narrow circle of the doctrinaire to enter the wider and more influential society of men of letters."[43]

[43] *Le droit international*, i, 256.

BENJAMIN FRANKLIN'S PLANS FOR A COLONIAL UNION, 1750–1775

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It is a long time since any serious student of history has proceeded on the assumption that whenever our forefathers wanted to shape or re-shape their governments, local or national, they sat down and drawing forward a sheet of paper said, "Lo, now we will make ourselves a constitution." Our whole conception of history is nowadays shot through with theories of evolution, of the adoption and incorporation of the old into the new. Yet the process by which the institutions of the past have been wrought into those of the present is often neglected; a general statement, an indistinct impression is frequently allowed to stand unverified for lack of consultation of easily available records. For instance, no student of our constitutional history today lets Gladstone's remark as to the genesis of our federal Constitution go unchallenged; it is accepted as a fact that that instrument is at once a summary and the culmination of colonial and confederate legislative experience. Moreover, the part that the ineffective Articles of Confederation played in the formation of our federal Constitution, negative as it was, has been clearly and incontrovertibly set forth.[1] Yet it has been said with truth that the history of this earlier constitution—the Articles of Confederation—has been almost neglected, so completely has it been "overshadowed" by the work of the convention of 1787.[2] Nevertheless, every student of the period of the American Revolution knows the

[1] Max Farrand, "The Federal Constitution and the defects of the Confederation" in the *American Political Science Review*, ii, 532–544. (Nov. 1908.)

[2] Editorial paragraph in Channing and Hart, *American History Leaflet*, no. 20, "The Exact Text of the Articles of Confederation with the Franklin and Dickinson drafts.'"

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"Dickinson draft" and the "Franklin draft" of 1776 and 1775—drafts of schemes for union of the colonies, though the specific relation each bears to the final articles has not been subjected to critical examination. But where did Franklin and Dickinson get their ideas? Was constitution-making so thoroughly in the air that one made plans for confederations as one wrote letters? Nor was this paper of 1775 Franklin's first attempt at constitution-making; he had already played a large part in the Albany congress and in preparing the Albany plan of union. Is there any connection between these two plans of his? When did he first become interested in schemes for union? These are some of the questions which occupy the mind as soon as one begins to work backward from the Constitution of 1787. It is the purpose of this paper to show as far as possible Franklin's work as a constitution-maker, and especially the genesis of his plan of 1775 for inter-colonial union.[3]

Benjamin Franklin was born in Boston in 1706, and lived in New England until 1723, when he became a resident of Philadelphia. Practical man of affairs and good organizer as he was, with public works in the city of his adoption to attest his skill as an administrator, it was natural that when necessity for concerted action among the colonies arose he should set his versatile mind to concocting some scheme for inter-colonial union. The occasion arose in 1750, over the question of fighting off the French and the Indians. Ever since the first settlements had been planted in America, the Indians had been intermittently a menace, but about 1690 to that danger was added the more concrete terror of French leadership combined with Indian aggressions. Between 1690 and 1748 various plans for colonial union against French and Indian enemies had been suggested, beginning with the scheme of Jacob Leisler and William Penn, and continuing with such projects as those of Robert Livingston and Daniel Coxe.[4] None

[3] The documents of 1643, 1754, and 1775 which are used in this paper are the reprints in *American History Leaflets*, edited by Channing and Hart, nos. 7, 14 and 20.

[4] See Frothingham, *Rise of the Republic* (10th Edition), p. 90–95 and footnote on those pages for a discussion of Leisler's scheme. For the other plans, see Channing and Hart's *American History Leaflets*, No. 14, "Plans of Union, 1696–1780."

of these plans ever got beyond the stage of presentation, but when in 1748 it was evident that the treaty of peace just signed was in reality but an armed truce between England and France, and that warfare was likely to begin again at any moment, the interest in a defensive alliance among the colonies, particularly to guard the long lines of frontier, was again aroused, and this time to some purpose. Among those whose interest went so far as to result in something really constructive was Benjamin Franklin. In a letter from Philadelphia, bearing date of March 20, 1750, he wrote to his friend Mr. James Parker, advocating such a union, and expressing the opinion that the initiative in such a project must come from the colonies themselves and not from the parliament in London.[5] He thus concludes his letter: "Were there a general council form'd by all the colonies, and a general governor appointed by the crown to preside in that council, or in some manner to concur with and confirm their acts, and take care of the execution, everything relating to Indian affairs and the defence of the colonies might be properly put under their management. Each colony should be represented by as many members as it pays sums of hundred pounds in the common treasury for the common expense; which treasury would perhaps be best and most equitably supply'd by an equal excise on strong liquors in all the colonies, the produce never to be apply'd to the private use of any colony, but to the general service. Perhaps if the council were to meet successively at the capitals of the several colonies, they might thereby become better acquainted with the circumstances, interests, strength, or weakness, &c., of all, and thence be able to judge better of measures proposed from time to time; at least it might be more satisfactory to the colonies if this were proposed as a part of the scheme, for a preference might create jealousy and dislike."

Where did Franklin get his ideas for this rough outline? The English government had more than once suggested a governor-

[5] See Franklin, *Works* (Bigelow edition) ii, 219–220, This is the letter which Bancroft in his *History of the United States*, iv, 91–2 (edition of 1857) says is anonymous, but he believes it to be one of Franklin's. It is also given in Franklin, *Writings* (Smyth edition) iii, 42, 43.

general for all the colonies, and Penn and Coxe had contemplated the inclusion in their plans (already alluded to) of such an official.[6] Penn and Coxe had also suggested a council made up of representatives from all the colonies; but that council, with its duties and its rotation in the place of meeting are found together in quite another place—the New England confederation of 1643. To this confederation, which furnishes the only real achievement in union during almost the whole of our colonial history, one must look for the genesis of many of Franklin's ideas. In 1643 the four colonies of Massachusetts Bay, Plymouth, Connecticut and New Haven had adopted articles of confederation "for mutual help and strength in all our future concernments. . . . .;" entering "into a firm and perpetual league of friendship and unity for offense and defense, ... and for their mutual safety and welfare." After what earlier confederation this plan of 1643 was patterned is not known; but it has been suggested that the union of Utrecht afforded the prototype. It would not be unreasonable to suppose that the residence of the Pilgrims in Holland had rendered them especially familiar with the Dutch confederation, and that when the occasion arose for union, they would turn to that alliance for their example.[7] The New England confederation had a varied existence; yet scarcely a year passed without at least one meeting of representatives under its aegis, until with a new imperial dispensation it went down in 1685 into its grave. But the memory of this first intercolonial union persisted throughout the colonial period.

To this document one must look to find the combination of a plan for a representative council, its duties, and the rotation of its place of meeting, all of which Franklin listed in his letter to Parker

[6] See Frothingham, *Rise of the Republic* (10 edition), 112–114; also *American History Leaflets*, no. 14, 3–6.

[7] Professor Lucy M. Salmon has in the *American Historical Association Report* for 1893, pp. 137–148, suggested the connection with the Union of Utrecht of 1579. She very rightly remarks that when one remembers the term of residence in Leyden of a number of persons who became founders of the New Plymouth colony, one would expect to find Dutch influence reflected in a plan of union prepared soon after the emigration to America. See also Sir William Temple, *Works* (ed. 1814) i, 94–125, where the government of the United Provinces is discussed in full.

as points to be considered in forming an intercolonial union. What was new in this tentative scheme of Franklin's was the idea of representation proportional to the amount of contributed funds, and the idea of a liquor tax. But the plan is evidently only a basis for discussion, and one must not lay stress on its resemblance to any earlier schemes. What makes it important is that Franklin used it, somewhat enlarged, as the basis of the "Short Hints" which he carried to the Albany congress in 1754.

Stirred by the insistent and far-reaching plans of France for controlling the heart of the continent, the crown in 1753 through a circular sent by the secretary of state, the Earl of Holdernesse, to all the colonial governors; and through a letter sent to several colonial governors by the lords of trade, proposed an intercolonial convention. This convention was asked to consider the situation, and to cement the friendly relations existing with the Five Nations; and also "to enter into articles of union and confederation with each other for the mutual defence of His Majesty's subjects and interests in North America, as well in time of peace as war."[8] Thus the initiative for union in 1753 may be said to have come from the British government, and was transmitted to the various assemblies by the colonial governors. There does not seem to have been any general enthusiasm for the proposal; but seven colonies—Pennsylvania, New Hampshire, Maryland, Connecticut, Rhode Island, New York, and Massachusetts, chose commissioners. Those for Pennsylvania were Benjamin Franklin, Rev. Richard Peters, John Penn, and Isaac Norris. Franklin in his paper, the *Pennsylvania Gazette*, on May 9, 1754, printed a woodcut representing a snake cut into ten pieces, each having the initials of a colony or a section (like New England), with the words, "Join or die," the whole device being followed by an article

[8] The letter of the Earl of Holdernesse is dated 28 August, 1753, and may be found in the *New Hampshire Provincial Papers*. vi, 234. The letter of the Lords of Trade, dated 18 September, 1753, may be found in various places, among them *New York Colonial Documents*, vi, 802, where it is more elaborate and precise than in the letter sent to some of the other governors. Governor Shirley of Massachusetts in a letter of March 5, 1754, to Gov. Wentworth of New Hampshire proposes that the subject of colonial union be discussed at Albany. See *N. H. Prov. Papers*. vi. 279.

urging some intercolonial defensive association.[9] In a letter dated June 8, 1754, Franklin sent to James Alexander the sketch of such an association under the heading "Short Hints," asking his friend to look them over, pass them on to Dr. Cadwalader Colden for his inspection, and then "forward the whole to Albany."[10] These "Short Hints" are simply an amplification of what he had offered in his letter to Mr. Parker in 1750. He contemplated merely a union of "the Northern Colonies," which was natural, since Georgia and the Carolinas were not bidden to the congress, and Virginia refused to send delegates. That union was to be presided over by a governor-general appointed and paid by the crown, who was to be the executive officer of the union, and to have a negative on all acts of the grand council. The grand council was to consist of one member from each of the smaller colonies and two or more from each of the larger, "in proportion to the sums they pay yearly into the general treasury;" and the pay of the councillors was to be so many shillings per diem during sessions, and mileage. This council was to meet " . . . . . times in every year, at the capital of each colony, in course," at the call of the governor-general. The general treasury was to be applied by "an excise on strong liquors . . . . or duty on liquor imported, or——shillings on each license of a public house, or excise on superfluities, etc." Each colony was to collect its quota ready to be paid out on orders issued by the governor-general and grand council acting together. The duties and powers of the executive and council were concerned with Indian treaties and purchases, the maintenance and encouragment of new settlements, the protection of the coasts and trade, and "everything that shall be found necessary for the defence and support of the colonies in general, and increasing and extending their settlements." Finally, an act of parliament was to be obtained for the establishment of this union. It will be readily perceived that this rough draft was quite in harmony with the plan outlined in the letter of 1750.

[9] See *Pennsylvania Gazette*, 9 May, 1754.

[10] See Franklin, *Works* (Bigelow ed.) ii, 347–350, and footnote on 347. Also *American History Leaflets*, no. 14, pp. 8–9.

When the commissioners from the several colonies met, it appeared that others had brought plans for union also, and a motion was made on June 24 that the commissioners express their opinion on the wisdom of forming a union of all the colonies. This was passed in the affirmative.[11]

A committee was then appointed "to prepare and receive plans or schemes for the union of the colonies, and to digest them into one general plan for the inspection of the Board: Resolved, that each government choose one of their own number to be of that committee." The following committee was then appointed: Thomas Hutchinson for Massachusetts, Theodore Atkinson for New Hampshire, William Pitkin for Connecticut, Stephen Hopkins for Rhode Island, William Smith for New York, Benjamin Franklin for Pennsylvania, Benjamin Tasker for Maryland.[12]

Among those who presented plans were Franklin and Richard Peters. With Franklin's rough plan we are familiar, for it was

[11] *Pennsylvania Colonial Records*, vi, 66. Yet the instructions from their assemblies to the commissioners from New Hampshire, Maryland, Connecticut, and Pennsylvania made no mention of forming a confederation. The commissioners from Massachusetts carried plenary instructions worded exactly as was the letter of the lords of trade referred to on p. 8 of this paper. Rhode Island gave its commissioners instructions "in general, as far as the abilities of this government will permit, to act in conjunction with the paid commissioners in everything necessary for the good of his Majesty's Subjects in those parts, and to answer as far as we can the Designs of his Majesty's Instructionz to this Colony comunicated [*sic*] to us by the Earl of Holdernesse" . . . . . For these commissions see *Pennsylvania Archives*, 1st. Series, ii, 137–143. Georgia and the two Carolinas had not been invited to the Congress. Virginia refused to send delegates. See *Dinwiddie Papers* in *Va. Hist. Coll.*, New Series, iii, 99; and *ibid.* 81, for a letter to James Hamilton of Pennsylvania, dates 23 Feb. 1754.

[12] *Pennsylvania Col. Recs*, vi, 67. Writing 34 years later in his autobiography, Franklin says: "In our way thither [to Albany], I projected and drew a plan for the union of all the colonies under one government, so far as might be necessary for defence, and other important general purposes" [He showed it to two men] . . . . "and, being fortified by their approbation, I ventur'd to lay it before the Congress. It then appeared that several of the commissioners had form'd plans of the same kind." . . . [After the question of establishment of a union had passed unanimously] . . . . "A committee was then appointed, one member from each colony, to consider the several plans and report. Mine happen'd to be preferr'd, and, with a few amendments, was accordingly reported." See Franklin, *Works*, (Bigelow ed.) i, 243. Thomas Hutchinson in his *History of Massachusetts Bay* (ed. 1828), iii, 21, speaks of Franklin's bringing forward a project "the heads wherof [*sic*] he brought with him."

the one he had already shown Mr. Alexander and Dr. Colden. Mr. Peters' plan was not apparently used at all, nor was that of Thomas Pownall.[13] On June 28, the committee reported to the congress "Short Hints of a Scheme," of which "copies were taken by the commissioners of the respective provinces." It was doubtless through this incident that certain men have had the credit for presenting plans closely resembling the Albany plan.[14] From June 28 to July 9 the rough draft was debated. Finally, on July 9, Franklin was authorized to make a draft of the plan "as now concluded upon."[15] On the 10th he submitted his draft, which after some debate was adopted and ordered to be transmitted to the several colonies for action.[16] This draft is the so-called "Albany Plan of Union." The plan is altered in some ways from the "Short Hints," which Franklin had brought with him, and it is, of course, greatly extended, yet all the essentials of the rough draft are found incorporated in the final plan, save the scheme for raising money for the common treasury by a tax on liquors.[17] In the "Albany plan" as finally amended, the president-general and the grand council "have power to make laws and lay and levy such general duties, imposts or taxes, as to them shall appear

[13] For Mr. Peters' plan see *American History Leaflets*, no. 14, pp. 6–8; or *Pennsylvania Archives*, 1st. series, ii, 197–199. See *Pennsylvania Archives*, 2nd. series. vi, 197–8, for Mr. Pownall's plan.

[14] The best example of this is in the case of the so-called Meshech Weare plan, published in June 1897, in the *Bulletin of the New York Public Library*, vol. i, no. 6, pp. 149–150. It is headed "Short Hints Towards a Scheme for a General Union of Ye Brittish Colonies on the Continent." What follows is a rough sketch following in general the Albany plan, but with short, unfinished sentences, and adding two queries at the end. There is little doubt in my mind that this was the rough draft which each member had on June 28. Stephen Hopkins of Rhode Island noted in his diary under date of 29 June, "The Hint of a scheme for the Union of the Colonies was debated on." See *Rhode Island Historical Tracts*, no. 9, p. 16.

[15] *Pennsylvania Col. Rec.*, vi, 100.

[16] *Ibid.*, 105, 109.

[17] Governor Horatio Sharpe of Maryland in a letter to Cecil Calvert, dated September 15, 1754, gives a discussion of modes of compelling colonial coöperation in the matter of taxation. He there speaks of a duty on imported liquors as one feasible scheme, and an equal poll tax as another. See Sharpe, *Correspondence*, i, 99.

most equal and just, ... and such as may be collected with the least inconvenience to the people, rather discouraging luxury than loading industry with unnecessary burthens." Further than that the commissioners were not prepared to go. Franklin himself says, in a letter of December 29, 1754, ". . . . tho I projected the Plan and drew it, I was oblig'd to alter some Things, contrary to my Judgment or should never have been able to carry it through."[18]

In conclusion as to Franklin's share in the Albany plan one may say; he took to the congress a rough draft of a plan for union of the northern colonies; he was a member of that committee which received all plans offered, debated and probably combined them; he made a final draft of the result of their deliberations; and almost every item in his rough sketch was incorporated into the final plan. But this final plan was a composite of the ideas of men from various colonies, and no man can be called its exclusive author. Nor do we know where Franklin got his ideas. His rough sketch resembles the New England confederation of 1643 in the three points noted above: a representative council, its duties, and the rotation in place of meeting. But there is nothing to show certainly where the ideas arose. As we know, the plan pleased nobody, it was not accepted by the colonies and inter-colonial union was as far off as ever. To be sure, other plans were

[18] Franklin to Peter Collinson, *Writings* (Smyth ed.) iii, 243. Governor Shirley in a letter to Secretary Robinson speaks of "a gentleman who had a principle hand in forming the Albany Plan," and then quotes from Franklin. See *Pennsylvania Archives*, 2nd series, vi, 214. Shirley further says he formed a rough sketch of a plan, which Hutchinson thus describes: "Mr. Shirley seems to have been in favor of an assembly to consist of all the governors of the colonies, and a certain number of the council of each colony, with powers to agree upon measures for the defence of the colonies, and to draw upon the treasury in England for money necessary to carry such measures into execution; for the reimbursement whereof, a tax should be laid on each colony by an act of Parliament. This plan was communicated by Mr. Shirley to Mr. Franklin, one of the delegates from Pennsylvania, who a few months after the convention ended, went to Boston. . . . "

Franklin in *Works* (Bigelow ed.) ii, 352, says he proposed that the union be sanctioned by Act of Parliament in order to prevent the nullification by any single colony of an act of the Grand Council, and the possible secession of such nullifying colony.

later offered, such as Shirley's,[19] Hutchinson's[20] (which is a variation of the Albany plan), and Halifax's;[21] and the subject was also debated.[22] But no formal union was attempted for many years.

After the rejection of the Albany plan by the colonies Franklin maintained for a number of years silence on the subject of a union of the colonies. He was in England from 1757 until 1762, and from 1764 until 1775. It was not until 1774 that he again returned with vigor to the subject of inter-colonial union. He was still at that time in London, and under date of February 18, 1774, he wrote to Joseph Galloway:[23] "I wish most sincerely with you that a Constitution was form'd and settled for America that we might know what we are and what we have, what our Rights and what our Duties in the Judgment of this Country as well as in our own. Till such a Constitution is settled, different Sentiments will ever occasion Misunderstandings." Later in that year Galloway drew up a plan which he sent to Franklin. He here provided for a union "between Great Britain and [the thirteen colonies]," in which there was to be "a British and American legislature." From this point, Galloway follows closely the text

[19] See Hutchinson, *Hist. of Massachustts Bay* (ed. 1828), iii, 23; also *N. Y. Col. Doc.* vi, 933.

[20] In the Hutchinson plan the method of taxation is like the one in Franklin's "Short Hints," save that the taxes so levied were to bear relation to population. This plan apparently represents merely Hutchinson's amendments to the Albany plan, for it bears date of December 26, 1754. Franklin had been in Boston for some weeks during the fall of 1754, and he and Hutchinson may very well have had conferences on the subject. See Hutchinson, *Hist. of Mass. Bay* (ed. of 1828), iii, 23. See also *Mass. Hist. Coll.*, First Series, vii, 203, for a plan of union for New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey. In the appendix to Carson's *Hundredth Anniversary*, ii, 474, the statement is made that in the Massachusetts Assembly which debated the Albany Plan a substitute plan was offered (probably the one given in the *Massachusetts Hist. Coll.*, First Series, vii, 203–206); that both the substitute and the Albany plan were rejected, and a new committee reported the Hutchinson plan. This is probably correct. The Hutchinson plan is given in Carson's *Hundredth Anniversary*, ii, 474–478.

[21] *N. Y. Col. Doc.*, vi, 903–906. Dated 9 Aug., 1754.

[22] See *Ibid.*, vii, 438. Also Isaac Hunt to Benjamin Franklin, a letter dated from Philadelphia, 21 May, 1766, in the Franklin papers which are in the possession of the American Philosophical Society in Philadelphia, under the caption "I, 58."

[23] Letter to Galloway, Franklin, *Writings* (Smyth ed.) vi, 196.

of the Albany plan for several paragraphs[24]—so closely that it is evident that Galloway merely adapted the Albany plan to his scheme. Franklin showed the plan to Lords Chatham and Camden, and then wrote to Galloway his apprehensions regarding

[24] *Galloway Plan*	*Albany Plan*
"within, and under which government, each Colony shall retain its present Constitution and powers of regulating and governing its own internal police in all cases whatever."	"within, and under which Government each Colony may retain its present constitution, except in the particulars wherein a charge [change] may be directed by the said act, as hereinafter follows." . . . . .
"That the said Government be administered by a President General to be appointed by the King, and a Grand Council to be chosen by the Representatives of the people of the several colonies in their respective Assemblies, once in every three years."	"That the said General Government be administered by a president-general to be appointed and supported by the Crown, and a Grand Council to be chosen by the representatives of the people of the several Colonies, meet [met] in their respective assemblies." [In a later paragraph specifies election every three years.]
[Paragraph leaving number of members for each colony blank.]	[Paragraph specifies number of members from each colony, 48 in all.]
"Who [members of the Grand Council] shall meet at the city of . . . . for the first time, being called by the President-General as soon as conveniently may be after his appointment. That there shall be a new election of members for the Grand Council every three years; and in the death, removal, or resignation of any member, his place shall be supplied by a new choice at the next sitting of Assembly of the Colony he represents."	"Who shall meet for the present time in the City of Philadelphia in Pennsylvania, being called by the President-General as soon as conveniently may be after his appointment." "That there shall be a New Election of the members of the Grand Council every three years, and on the death or resignation of any member, his place shall be supplied by a new choice at the next sitting of the Assembly of the Colony he represents."
"That the Grand Council shall meet once in every year if they shall think necessary and oftener if occasions shall require, at such time and place as they shall adjourn to at the last preceding meeting, or as they shall be called to meet at, by the President General on any emergency."	[Refers to change in proportion of members from each colony.] "That the Grand Council shall meet once in every year, and oftener if occasion requires, at such time and place as they shall adjourn to at the last preceding meeting, or as they shall be called to meet at by the President General, on

such a union. Said he:[25] ". . . . When I consider the extreme corruption prevalent among all Orders of Men in this old rotten State, and the glorious publick Virtue so predominant in our rising Country, I cannot but apprehend more mischief than Benefit from a closer Union. I fear they will drag us after them in all their plundering Waist, their desperate Circumstances, Injustice and Rapacity, may prompt them to undertake, and their

[24]—*Continued*

Galloway Plan	*Albany Plan*
	any emergency, he having first obtained in writing the consent of seven of the members to such call, and sent due and timely notice to the whole."
"That the Grand Council shall have power to choose their Speaker" . . .	"That the Grand Council have power to choose their speaker." . . . .
"That the President General shall hold his office during the pleasure of the King, and his assent shall be requisite to all Acts of the Grand Council, and it shall be his office and duty to cause them to be carried into execution."	"That the assent of the President General be requisite to all Acts of the Grand Council, and that it be his office and duty to cause them to be carried into execution."

From this point the two plans diverge; but enough has been given to show the genesis of the Galloway Plan. See *Amer. Hist. Leaflets*. No. 14, pp. 19–21.

[25] See Franklin, *Writings*, (Smyth ed.) vi, 311; also Franklin, *Works*, (Bigelow ed.) v, 435. The rest of the quotation is: ". . . . . But should that Plan be again brought forward, I imagine that before establishing the Union, it would be necessary to agree on the following preliminary Articles:

1. The Declaratory Act of Parliament to be repeal'd.
2. All Acts of Parlt. or Parts of Acts, laying Duties on the Colonies, to be repeal'd.
3. All Acts of Parlt. altering the Charters or Constitutions or Laws, of any Colony to be repeal'd.
4. All Acts of Parlt. restraining Manufactures in the Colonies to be repeal'd.
5. Those parts of the Navigation Acts, which are for the Good of the whole Empire, such as require that Ships in the Trade should be British or Plantation built and navigated by ¾ British Subjects; with the Duties necessary for regulating Commerce to be re-enacted by both Parliaments.
6. Then to induce the Americans to See the regulating Acts faithfully executed, it would be well to give the Duties collected in each Colony to the Treasury of that Colony, and let the Govt. and Assembly appoint the Officers to collect them, and proportion their Salaries.—Thus the business will be cheaper and better done and the misunderstandings between the two Countries now created and fomented by the unprincipled Wretches generally appointed from England to be entirely prevented.

"These are hasty thoughts, submitted to your Consideration."

wide-wasting Prodigality and Profusion a Gulph that will swallow up every aid we may distress ourselves to afford them. Here numberless and needless Places, enormous Salaries, Pensions, Perquisites, Bribes, groundless Quarrels, foolish Expeditions; false accounts or no accounts. Contracts and Jobbs devour all Revenue, and produce continual Necessity in the midst of natural Plenty. I apprehend therefore that to unite us intimately will only be to corrupt and poison us also." . . . . "However, I would try anything, and bear anything that can be borne with Safety to our just Liberties, rather than engage in a War with such near Relations, unless compelled to it by dire necessity in our own Defence" . . . . His words are significant: he was evidently already contemplating independence as a probability, and intended to be prepared for any emergency. In his letter to Galloway he makes no mention of the resemblance of the Galloway plan to the old plan of 1754—a curious omission if Franklin had been the sole author of that early scheme.[26]

On May 5, 1775, Franklin arrived in Philadelphia from England.[27] He was shortly made a member of the second continental congress, and presented on July 21, 1775, a draft of articles of confederation for the consideration of that body. This plan follows in so many particulars, especially in whole phrases and clauses, the articles

[26] Franklin had written to Governor Shirley, December 22, 1754: "Since the conversation your Excellency was pleased to honor me with, on the subject of *uniting* the *colonies* more intimately with Great Britain, by allowing them *representatives* in *Parliament*, I have something further considered that matter, and am of opinion that such a union would be very acceptable to the colones, provided they had a reasonable number of representatives allowed them; and that all the old acts of Parliament restraining the trade or cramping the manufactures of the colonies be at the same time repealed. . . . ." See Franklin, *Works*, (Bigelow ed.) ii, 384; or *Writings*, (Smyth ed) iii, 238.

"By 1769 he was an advocate of colonial independence from the British legislature." See Lincoln, C. H., *Revolutionary Movement in Pennsylvania*, 147.

[27] In the *American Historical Review*, ix, no. 3, pp. 524–525, is given a letter of Franklin's, which is in the papers of the *Continental Congress*. It is written from London, March 13, 1775, to Charles Thomson. After speaking of the "Non-Consumption Agreement," he adds: "I flatter myself that neither New York nor any other colony will be cajol'd into a Separation from the common Interest. Our only Safety is in the firmest Union, and keeping strict Faith with each other." Later in the same month he sailed for America.

of the New England confederation of 1643, that one cannot doubt that Franklin used the latter as the basis for the former. It is impossible to say where Franklin became familiar with the articles of confederation of 1643; there is no copy anywhere among his papers, and he was apparently not in the slightest degree aware of the history of the New England alliance. But his friendship with Thomas Hutchinson was continuous for many years after 1748, during the time when Hutchinson was writing his *History of Massachusetts Bay*, in which he so admirably summarized the confederation, article by article, that it is certain he had access to a copy.[28] That the old union of the New England colonies was still cited is evident from the newspapers of the day,[29] and in some manner Franklin appears to have familiarized himself with it. He takes in Article I, the name "The United Colonies of North America," where the old constitution had "The United Colonies of New England."

In Article II, the relation can be best seen by placing the two side by side:

Franklin's Plan	*New England Confederation*
"The said United Colonies hereby severally enter into a firm League of Friendship with each other, binding on themselves and their Posterity for their common Defence against their Enemies, for the Security of their Liberties & Property, the Safety of their Persons & Families, & their mutual and general Welfare."	"The said United Colonies for themselves and their posterities do jointly and severally hereby enter into a firm and perpetual league of friendship and amity for offence and defence, mutual advice and succor upon all just occasions both for preserving and propagating the truth and liberties of the Gospel and for their own mutual safety and welfare."

[28] Hutchinson speaks as if the Articles were readily accessible. Said he: "They [Articles of Confederation of 1643] have been published at large by Doctor Mather, Mr. Neale, &c. and are in substance as follows: . . . ." Then follows an excellent summary by paragraphs; but he does not mention the rotation in the place of meeting, which Franklin used.

[29] Frothingham, *Rise of the Republic*, [10th ed.] p. 292, quotes from newspapers of 1772. He also [*ibid*, p. 481–2, footnote] gives an extract from the Boston *Gazette* of 22 Apr. 1776, quoting an article in the *Pennsylvania Evening Post* of 5 March, 1776; entitled "Proposals for a Confederation of the United Colonies," consisting

In Article III of Franklin's draft provision is made for the retention by each colony of "as much as it may think fit of its own present Laws, Customs, Rights, Privileges, and peculiar jurisdictions within its own limits." In the New England confederation (paragraph 3) it is "further agreed" that each colony in the association shall retain their own "peculiar jurisdiction" within their own limits. In the Albany plan, each colony is to "retain its present constitution."

Franklin's Article IV provides for the annual election of delegates in each colony, and that "each succeeding Congress be held in a different Colony till the whole number be gone through, and so in perpetual Rotation." This was in accordance with paragraph 6 of the New England confederation, which provides "that for the managing and concluding of all affairs proper, and concerning the whole confederation," two commissioners were to be chosen by each of the four colonies composing the union; and these commissioners were to meet in each colony in rotation. In the "Short Hints" the same plan of rotation was to be followed; but in the Albany plan, only the place of the first meeting is designated.

Franklin's Article V laps over paragraph 6 of the New England confederation, since it deals with the powers of the congress; but since the union of 1643 is largely for mutual aid in Indian wars the powers of that union would naturally be much more limited than those planned in 1775. Both plans give to the central body the power of determining upon war and peace, entering into alliances, regulating "our common forces" and inter-colonial affairs; but the plan of 1775 provided besides for the planting of new colonies, and for the appointment of civil and military officers "appertaining to the general Confederacy"—both of which clauses are found in the Albany plan.[30]

of seven articles. The proposals were accompanied by some comment, of which the following is given by Frothingham: "The New England Colonies, by many years' experience, found great advantage by a confederation, in carrying on their wars with the Indians, in treating with neighboring colonies settled under other States, and in adjusting and settling matters among themselves." The New England confederation was evidently under discussion at the time the Articles of Confederation of 1778 were formed, and probably pretty continuously throughout the decade.

[30] See Albany Plan, Paragraphs 11, 12, 13 and 17.

In Franklin's Articles VI and VII are to be found very close resemblances to paragraph 4 of the New England confederation. Franklin provides that:

"All Charges of War, and all other general Expences to be incurr'd for the common Welfare, shall be defray'd out of a common Treasury, which is to be supply'd by each Colony in proportion to its Number of Male Polls between 16 and 60 Years of Age; the Taxes for paying that proportion are to be laid and levied by the Laws of each Colony.

"The Number of Delegates to be elected & sent to the Congress by each Colony, shall be regulated from time to time by the Number of such Polls return'd; so as that one Delegate be allow'd for every 5000 Polls. And the Delegates are to bring with them to every Congress an authenticated Return of the number of Polls in their respective Provinces, which is to be triennially taken, for the Purposes above mentioned."

New England Confederation

"It is by these Confederates agreed that the charge of all just wars, whether offensive or defensive, upon what part or member of this Confederation soever they fall, shall both in men, provisions, and all other disbursements be borne by all the parts of this Confederation in different proportions according to their different ability in manner following, namely, that the Commissioners for each Jurisdiction from time to time, as there shall be occasion, bring a true account and number of all their males in every Plantation, or any way belonging to or under their several Jurisdictions, of what quality or condition soever they be from sixteen years old to threescore, being inhabitants there. And that according to the different numbers which from time to time shall be found in each Jurisdiction upon a true and just account, the service of men and all charges of war be borne by the poll; each Jurisdiction or Plantation being left to their own just course and custom of rating themselves and people according to their different estates with due respects to their qualities and exemptions amongst themselves though the Confederation take no notice of any such privilege."

In the Albany plan there was to be a new election of the members of the grand council every three years. Both the plan of 1754 and that of 1775 differed from the one of 1643 in making representation proportional—the number of members from each colony to be determined by the contribution made in each case to the general treasury. But in 1643 and 1775 this treasury was to be supplied by a poll-tax levied on male inhabitants between the ages of 16 and 60—a striking resemblance.

Franklin's Article VIII provides that one-half of the members returned, exclusive of proxies, be a quorum; in 1643, half the commissioners might constitute an emergency quorum, but not less than three-fourths could transact the more important business.[31] In the Albany plan 25 out of the 48 were to be empowered to act, but there must be "one or more from a majority of the colonies."

Franklin's Article IX, providing for an executive council of the congress, to consist of twelve persons, of whom one-third retired each year, is like the provincial council of the Pennsylvania legislative body, and is undoubtedly taken with but slight changes from the Pennsylvania "frame of government."[32]

Franklin's Article X, providing that "no colony shall engage in an offensive War with any Nation of Indians without the Consent of the Congress or Grand Council . . . ." is like paragraph 9 of 1643.

Franklin's Article XI, providing for a perpetual alliance as soon as possible with the Six Nations and with other Indians, and for purchase of Indian lands exclusively by the congress, "for the General Advantage and Benefit of the United Colonies," is like Article XI of the Albany plan, but bears no resemblance to anything in the 1643 confederation.

Franklin's Article XII provides for amendment of the Confederation as follows:

[31] See Paragraph 10.

[32] See Thorpe, F. N. *American Charters, Constitutions, and Organic Laws*, v, pp. 3064–5–6; also pp. 3077–9; also Constitution of Pennsylvania of 1776, ibid., 3086–3087. Franklin was president of the convention which drew up this constitution. See also, the council of state for the United Provinces of the Netherlands, in Sir William Temple, *Works*, (ed. 1814) i, 94–125.

"As all new Institutions may have Imperfections which only Time and Experience can discover, it is agreed that the General Congress from time to time shall propose such Amendments of this Constitution as may be found necessary; which being approv'd by a Majority of the Colony Assemblies shall be equally binding with the rest of the Articles of this Confederation." Neither the New England confederation nor the Albany plan contemplated amendment.

Franklin's Article XIII provided for inclusion upon application of "Ireland, the West India Islands, Quebec, St. Johns, Nova Scotia, Bermudas, & the East and West Floridas: and shall thereupon be entitled to all the Advantages of our Union, mutua[l] Assistance and Commerce." Here, again, there is nothing in either earlier plan corresponding to this arrangement.

Franklin's last paragraph reads as follows:

"These Articles shall be propos'd to the several Provincial Conventions or Assemblies, to be by them consider'd, and if approv'd they are advis'd to impower their Delegates to agree to and ratify the same in the ensuing Congress. After which the UNION thereby establish'd shall continue firm till the Terms of Reconciliation proposed in the Petition of the last Congress to the King are agreed to; till the Acts since made restraining the American Commerce & Fisheries a [re] repeal'd; till Reparation is made for the Injury done to Boston by shutting up its Port; for the Burning of Charlestown; and for the expense of this unjust War; and till all the British Troops are withdrawn from America. On the Arrival of these Events, the Co[lonies shall] return to their former Connection and Friendship with Britain: But on Failure thereof this Confederation is to be perpetual." Here is reiterated what he had expressed in his letter of February 25 to his friend, Joseph Galloway and on March 13 to Charles Thomson.

The resemblance between the Articles of the New England Confederation of 1643 and Franklin's draft of articles of confederation of 1775 is apparently neither accidental nor slight. It consists in the following points:

1. The name of the confederation.

2. The nature of the union so formed.

3. The reservation to each colony of its own jurisdiction and laws within its own limits.

4. The formation of a common treasury, to be applied by taxes.

a. Levied by each colony according to its own laws.

b. Levied upon polls between 16 and 60 years of age.

5. The general management of the affairs of the confederacy entrusted to commissioners or delegates chosen by each colony.

6. The requirement that the meetings of commissioners or delegates be held in each colony in succession.

7. The prohibition on any colony to engage in war without the consent of the others (or in 1775 the consent of the congress of delegates).

8. The intention of having the confederation perpetual—in 1643 without reservation, in 1775 under certain conditions.

Of course, there are differences between the two plans, as for instance the provision for proportional representation in the congress in 1775, whereas the representation was a fixed one in the earlier project. But when one has added Article IX, providing for the executive council; Article XI, on Indian relations, which is closely allied to the Albany plan of 1754; and Article XIII, for a possible extension of the union to all English colonies on the North American continent or the adjacent islands;–then all of the plan of 1775 is accounted for. It is evident that in the formation of this plan, the New England confederation of 1643 played no mean part. The part which Franklin's plan of 1775 played in the formation of the articles of confederation of 1778 is another story. But enough has been given to show Franklin's power of adapting and incorporating old ideas into new and to leave little doubt as to the genesis of his schemes for intercolonial union. He was apparently as early as 1750 familiar with the New England confederation, and his belief in its feasibility continued long. He made use, practical man as he was, of the form of government of his own colony, and also of the composite Albany plan. It is no wonder that in 1787 he should be named by Pennsylvania as one of her delegates to the convention which was to amend the

well-nigh useless constitution under which the United States had been living for six years. But the work of that body soon went far beyond him, and feeble and aged as he was, his contribution to its deliberations was but slight. Yet, in studying all the elements which went into the making of our Constitution, Franklin's part—no mean one—deserves study and consideration.

THE NEW YORK COUNTY SYSTEM[1]

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County government in New York, as in every other State, is more or less of a mystery to the average citizen. It is questionable whether, outside of the district attorney, and possibly the sheriff, very many people have any clear notion of the duties of any of the county officers. The activities of the counties are largely invisible and such as to attract very little interest or attention. On the other hand, counties use up a great deal of hard earned money and county officers loom up large on the political horizon at the general election.

For this prevailing ignorance, the nature of the county itself is largely to blame. It is an anomaly, and its anomalous character is due to the perpetuation of an historical institution through the manifold changes of the last two centuries. The county assumed a logical and practical form in its beginnings in the seventeenth century. In later times as the State developed, the interests of the people became diversified and they distributed themselves in some sections sparsely like the people of the southern States and sometimes into compact communities, as, for instance, in Onondaga, Monroe and Broome Counties. The form of local government which was made to fit the Hudson settlements was extended westward.

During the lapse of time since the earliest settlements, there have been no efforts to alter the fundamental form of the county to meet the modern conditions, except to provide for the popular election of officers which were formerly appointive. It is not strange, therefore, that the existing system of local government

[1] In many particulars this article is not applicable to the counties comprising greater New York.

should exhibit numerous duplications of functions and conflicts of authority, especially in those localities where the county has been eclipsed by the more modern organizations of the cities within its territory.

THE COUNTY AS A STATE AGENCY

In order to arrive at a clear conception of a New York county, it is necessary in the first instance, to think in terms of state government. The State of New York covers an area of 49,170 square miles. Its various sections have a great variety of interests industrial and social. Population in these sections is grouped in an infinite variety of combinations. But there is a fundamental unity underlying all the differences, common standards of living, ideals of conduct, and of property, civil and personal rights. The people have arrived and continuously arrive at new agreements which can be expressed in general laws of uniform operation on these matters affecting the common interests of the whole State.

In these circumstances, the logical thing to have been done in the start would have been to establish a centralized administration operating uniformly throughout the State, to enforce the provisions of these statutes. But the people of New York have not chosen to be logical in this matter. They have become accustomed, through long usage, to administering state laws through the agency of officers selected locally, resident in the locality and subjected only to a minor degree to state supervision.

Gradually, as the policy of state regulation has been extended, new duties have been put upon these local officers, or more local offices have been created to correspond to the new state activities. The duties of these officers are set forth in an imposing array of statutes. These of course, cover the whole subject indicated by their several titles and are directed partly to private citizens, partly to state officers and partly to county and local officers. In their application to officers, they are virtually codes of administrative procedure setting forth in minutest detail their various official duties, how they must be performed, the compensation for performance (in some cases) and the penalties for non-per-

formance. The specific office is designated in practically all cases and little or no discretion is left to the central executive authority to designate one officer to act in the place of another. No officer may find his duties set forth in any one law, but must consult from three to fifteen or twenty. Thus, the county treasurer finds most of his duties set forth in the tax law, but not all, for much of his work is outlined in the military law, the liquor tax law and the general municipal law. The county clerk is responsible for performing duties under the following: the penal, banking, lien, executive, tax, fish, forest and game, prison, liquor tax, domestic relations, partnership, public officers, general business, judiciary, real property, legislative, town, decedent estate, and county laws. The poor law contains the code for the county superintendents of the poor, the highway law for county superintendents of highways; the sheriff's duties are set forth in great part in the code of civil procedure.

THE CONSTITUTION OF THE COUNTY

But the county has an identity apart from its officers. It receives recognition in the constitution for a variety of purposes, such as the location of assembly districts. The constitution confers powers upon boards of county supervisors; it authorizes the legislature to confer upon these boards powers of local legislation and administration beyond what they possessed under the previous constitutions; it prescribes the methods of selecting the principal county officers.

What, however, might be termed the charter of the county is the county law, a general statute applicable as to most of its provisions, throughout the State, except as superseded by special act and (in case of the counties comprising New York) by the state constitution itself.

Just as the state constitution assumes the existence of the counties, so the county law assumes the existence of towns, villages and cities. The constituent parts of the county are, in fact, these various units of local self-government, The town, however, is a geographical division of the otherwise unincorporated

territory within the county, whereas cities and villages are communities whose boundaries are determined in practice by the presence of urban communities which have been set apart for special local purposes and with special powers, in an area which was originally rural and hence capable of more or less arbitrary division.

From one point of view, the county may be described as the aggregation of the towns within certain territorial limits, the term "town" in this connection including villages and wards of cities which are the units of representation in the county board from the urban territory, The functions of towns are set forth in the town law.

It may be said then that the county has this two-fold character:

1. A geographical division of the State with which certain virtually state officials, like the district attorney, sheriff and coroner are identified by residence and jurisdiction.

2. A federation of units of local government for the administering of certain common concerns.

THE COUNTY AS A FINANCIAL AGENCY

The double nature of the county is best illustrated by reference to its financial functions.

To begin with, the State has not only given the people of the county the privilege of administering the general laws in their own way, but, quite consistently, has imposed upon the county the duty of financing this activity. And so there has been created within the county a group of officers, representing the various local divisions, who serve collectively as a financial agency for the purpose of supplying the "wherewithal" to the quasi-state officers (sheriff, district attorney, etc.), referred to above. This group of strictly local officers constitutes the board of supervisors. Individually its members are the executive officers of the respective towns.

But the State not only requires its subdivisions to raise money for the administration of state laws, within their several limits, and for its proportion of the general state expenses, but it makes

the county board a local revenue agent in one important respect: the equalization of assessments, as between towns. The actual direct assessment upon individuals (including the review), and the collection of taxes is a town function.

Upon this financial foundation, the county carries on the typical activities of similar units in other States. The county is, for example, a unit of judicial administration, and as such marks the sphere of the county court, the surrogate, the sheriff, the district attorney and the county clerk (in so far as this officer is an attaché of the court). It is a unit of police administration for the purposes of the sheriff's and coroner's offices. It is a recording agency for a large variety of documents required to be filed and issued under a variety of state laws. It is a local agency for indigent aid. It is the unit of administration for the election law.

CENTRAL EXECUTIVE CONTROL OVER COUNTY OFFICERS

Control over the county officers and the enforcement of the statutes at their hands is accomplished in several ways. (The judiciary, is an integral state system and is to be considered apart from the other divisions of administration).

The starting point in state control is the statutory power of the state administration to demand reports from its local agents. Thus, the county treasurer reports concerning the state of school funds to the commissioner of education, concerning militia funds to the adjutant-general, concerning revenues from liquor licenses to the state excise commission. As to the condition of general state funds, he reports directly to the comptroller and the state treasurer. Superintendents of the poor report to the state charities commission; county clerks to the superintendent of banks, the insurance commissioner and the comptroller. Whenever the governor advises the attorney-general that he has reason to doubt whether the law relating to crimes against the elective franchise is being enforced, the attorney-general must require from the district attorney a report of all complaints and prosecutions in his county during the year past, under article 74 of the penal law.

What these reports shall contain and into just what form they shall be cast is determined principally by the central state officers themselves. If the local officer fails to make them, the executive may secure compliance with his orders with the aid of the courts and the district attorney.

In a more effective way, the governor, upon a report from the commissioner of health, may compel the district attorney to take the necessary steps to abate nuisances; the district attorney, upon notice of the prison commission, is obliged to make certain investigations into the conditions of prisons; the commissioner of agriculture may call upon the sheriff to execute the provisions of any order or regulation which he may make. The state treasurer may enforce the payment of state moneys by the county treasurer.

Possible removal by the governor is a more or less powerful incentive to obedience to the executive orders in the case of the sheriff, the district attorney, county superintendent of the poor, county treasurers, county clerks, and coroners. But supervisors (being, individually, town officers), are not removable in this way. This power of removal is of constitutional origin in the case of all the officers mentioned, except the treasurers and superintendents of the poor, and no restriction is put upon it except that the officer must be given a copy of the charges and an opportunity for a hearing.

The comptroller (of the State) appears to have very large actual powers of inquisition when he wishes to exercise them. When Martin H. Glynn held this office he investigated five counties, and had entered the sixth when he was "called off" by the legislature, which happened to be in control of the opposing party. In 1911, however, an act was passed providing for a bureau of municipal accounts, and attaching the same to the comptroller's office. This new bureau was given power to prescribe a uniform system of accounts in the civil divisions of the State; but so far its activities have been feeble.

Special forms of control are employed in the case of the sheriff and of officers handling funds, on account of the great and tangible responsibilities attaching thereto. They are subject to both

civil and criminal actions. All of them are required togive sureties as one of the conditions of entering upon their official duties. In the case of the non-payment of funds due the State, or if the sheriff is guilty of trespass, the officer's sureties are liable. These officers are of course, subject to the criminal law in cases of embezzlement, and the sheriff commits a crime if he aids or permits prisoners to escape. The county clerk commits a misdemeanor if he neglects to make transcripts or delays to make a search or refuses to make a statement required by law.

In the case of the activities of superintendents of the poor and the county superintendent of highways, state control seems to be much more direct and continuous. The state board of charities not only requires reports, but makes frequent inspections, without notice. State control over highways is strengthened by the fact that the state highway commission is not rigidly restricted by statute but is given large discretionary power. It must approve plans for state and county highways and may remove the county superintendent upon written charges.

The educational system enters into the county organization only in a financial way—it is the duty of the county treasurer to pay out school funds on the certificate of the commissioner of education. The labor department and the public service commissions operate in entirely independent units.

INTERNAL CONTROL OF COUNTY GOVERNMENT

From the foregoing it will be seen that the State is concerned with the enforcement of its own statutes to the extent that the individual local officers render a certain *minimum* service. The efficiency of the service beyond this point is mostly the concern of the people of the county. The cost of service may be controlled by the people of the county, through their board of supervisors, but this privilege is restricted in actual practice in many cases by special mandatory legislation, which fastens certain charges upon the county, as for example, when the constitution makes it the duty of the legislature to fix the salaries of the county judge and the surrogate, and when the county law limits the

board of supervisors in fixing the salaries of the elective county officers to those cases which are not otherwise dealt with by state law.

a. Financial control

Within this somewhat restricted sphere, the board of supervisors may do much to determine the efficiency and the cost of the county administration. It can hamper officials by too rigid economy or it can spend, with little or no investigation, large sums of money for equipping and maintaining the county offices.

In those counties in which the people have elected to establish the office of county comptroller, the authority of the board of supervisors is limited to the extent that no claim not approved by the county comptroller may be passed by them without a two-thirds vote. The county comptroller also keeps an account with each of the other county officers, thus acting as the financial agent of the board of supervisors.

b. Administrative, other then financial, control

Beyond the limits of its financial functions, the board of supervisors may be said to have practically no control over the other principal county officers. It can only indirectly control appointments of subordinates, inasmuch as every elective officer makes the selection of his own subordinates, subject to the civil service law (which is operative in seventeen counties), and to the provision noted above as to the numbers, grades and compensation of assistants, etc. The power of removal, as has been noted, is not a county but a state function and resides in the governor. But the board may do the following things:

1. Have custody of the corporate property of the county.
2. Divide any commissioner-district which contains more than 200 school districts.
3. Make one or more jury districts and regulations in respect to the holding of terms of courts.

c. Judicial control

A certain degree of local official control is exercised in certain specific instances by the county court. Sometimes this is expressed in minor and temporary appointments.

d. Electoral control

The whole system of local control of course is based upon popular election. The supervisors, district attorney, sheriff, county judge, surrogate, county clerk, treasurer, registers and coroners, are all elective under the constitution, and superintendents of the poor and county comptroller by statute (act III, sec. 26 and art. X, sec. 1) but no provision is made for popular recall.[2]

It is conceivable that the voters of a county might exercise also an indirect electoral influence in county affairs through their voice in the selection of a governor and other state officers.

THE COUNTY AS A LOCAL GOVERNMENT AGENCY

The foregoing description of the county, however, lacks one viewpoint to make it complete: The county is not an agency merely for administering the will of the State, and the functions of the county are not strictly limited to controlling the *means* of local administration. At the instance of the electors or on the initiative of the board of supervisors, the county may take on certain new functions, in which case it is an agency of local self-government.

Foremost among such functions is the repair and construction of highways, and for this purpose the county may raise by taxation a sum of money limited by law. The board of supervisors may raise money or may provide for a county laboratory, or a county hospital for the treatment of tubercular patients.

These powers, though local in nature, are subject in actual exercise to a detailed administrative procedure. In the matter of highways, for example, the resident taxpayers may petition for their construction. The board of supervisors may then decide

[2] The sheriff is ineligible for a second consecutive term.

to take action. But at this point the State steps in and imposes a very elaborate administrative procedure for the carrying out of the local purpose. The situation is similar with respect to the establishment of a hospital—if the county decides to erect one, it must do it precisely the way that the state law requires.

The county not only has no general, inherent, or residual powers of local government, but it is more rigidly restricted than the cities. It is a corporation of narrowly enumerated powers—which are, almost without reservation, of an administrative rather than a legislative nature.

CRITICISMS OF NEW YORK COUNTY SYSTEM

I. Relation to central government

From the foregoing description of the county and its functions, it would seem that the policy of the State so far as its local subdivisions are concerned, is to maintain an establishment which will be capable of securing the *minimum* performance of the duties set forth in its statutes. The policy probably arises not so much in positive design as in negative neglect. The statute law applicable to county officers is mainly concerned with the rights of individuals. To individuals the State furnishes adequate means of protection for property and person by affording remedies in the courts, as when a taxpayer has a right of action against any county officer for an unlawful act. He may sue the sheriff. The county clerk is liable to a heavy fine for a failure to keep on hand a supply of marriage licenses, etc. But the State affords little protection against the county clerk or the sheriff for offenses to the whole people, except in cases where an actual crime has been committed or the office has been subject to the grossest sort of mismanagement. It does not concern itself if the county clerk or the sheriff make representations with the object of securing a needless amount of help in their offices, or waste the funds of the county for useless supplies. With the people of the county rests the responsibility of self-protection, against this class of wrongs.

This policy has been consistently carried out in constructing the machinery of state control. In the first place, there is no consistent

subordination of county officers which will insure their complete responsibility for the whole range of their functions. No elective county officer with the exception of the superintendent of the poor can look to any one state official or board as his superior. The county treasurer, for example, is amenable to at least eight state officers and boards—the governor, the state treasurer, the comptroller, attorney-general, adjutant-general, commissioner of excise, state board of tax commissioners, and the commissioner of education. A similar division of responsibility exists in the case of the county clerk. The state administration is a system of independent units in which the supposedly superior officers have, in the last analysis, the same general method of control as a private citizen: the right to secure in the courts the performance of a ministerial duty.

As previously pointed out, the basis for the exercise of this right by state officers is the power which is conferred upon them to secure reports from the county officers. The reports, however, are apparently not supplemented by any system of continuous first hand inspection except in the case of the state board of chartities and the state highway commission. Whether or not the form of the reports is such as in themselves to give adequate information would have to be determined by somewhat detailed investigation.

Removal by the governor would seem to be a powerful remedy even in its potential influences. But this constitutional power is unsupported by any adequate means whereby the facts warranting removal may reach the governor's attention.

II. Defects of local organization

In putting its county policy into effect, the State has used more logic than science, in that it has laid down a uniform system of government for all of its subdivisions, regardless of the distribution of the people into rural or urban communities. It is true that the county law permits a considerable expansion of the organization. Thus the offices of county judge and surrogate may be separated; the county clerk may divide his duties with the register; the num-

ber of coroners and superintendents of the poor may be increased to as high as four; the establishment of the office of county comptroller is optional. But these variations correspond to quantitative rather than qualitative differences between communities.

A serious fault of county government is the long ballot system fastened upon the counties by constitution and statute. Inasmuch as each of the county officers is separately elected, it is impossible to secure proper subordination to the central administrative body which is, in theory, the board of supervisors. When such independent officers work at cross purposes, a situation is created in which the highest efficiency is impossible.

In more densely populated communities the long ballot evil with its accompanying division of responsibility, is much more serious than in the rural sections. County officers in the municipalities are overshadowed by the more conspicuous and interesting city positions; and when many officers are elected on the same ballot it is usually the county offices which escape the scrutiny of the citizen. The reason for this is that, with the possible exception of the district attorney, the duties of the county officers are of an uninteresting routine nature, which are almost entirely hidden from public view. They have nothing whatever to do with the shaping of public policies, nor any discretion in executing them.

Although in theory the board of supervisors is in control of distinctly county affairs, subject of course, to the control exercised by state officers, the board is so composed that it cannot in fact exercise that measure of authority which is necessary to secure efficiency. In the first place, it is usually too large a body. A given citizen is rarely acquainted, either personally or by reputation, with more than one of the members, so that at best he can make himself felt upon a small fraction of the board.

Secondly, the supervisors are not in constant session, and hence cannot be in continous touch with what is going on in the county offices. They are not elected primarily to serve the county, but rather as the executive officers in their several townships. Their service for the county is purely secondary. In fact, the people of the county, as such, have no representation whatsoever in the

control of distinctly county affairs. There is every incentive for every member of the board of supervisors to serve his district at the expense of the whole county. Such a system cannot fail to block progress, for the energy which should be spent in forward motion is bound to be lost in lateral friction. The township-county system is open to precisely the same objection as the ward plan in cities; log-rolling or the playing off of the interests of the parts against the interests of the whole. It is doubtless largely owing to these facts that boards of supervisors, though given power to regulate county affairs in an efficient, and even scientific manner, have invariably failed to live up to their opportunities. The form of county government precludes the development of a "county spirit" which is essential to the improvement of political methods.

But not only is the county without a proper regulative body, but it lacks anything having the least semblance to an executive head. The board of supervisors has no representative competent to keep it apprised of the needs and activities of the various county offices, nor any channel through which to communicate or enforce its orders to these offices. It can deal direct, of course, during the brief period of its sessions, but between sessions every county officer is free to go his own gait.

THE RECONSTRUCTION OF NEW YORK COUNTY GOVERNMENT

In undertaking a thorough-going reconstruction of county government in New York State, these constitutional restrictions must be observed:

1. The legislature may not pass any local or private bill providing for the election of boards of supervisors (see art. III, sec. 18).
2. Boards of supervisors must be elective, but the composition of these bodies, the manner of their election and their terms of office may be provided by law (art. III, sec. 26).
3. The legislature is authorized to confer powers of local legislation and administration upon the boards of supervisors (art. III, sec. 27).
4. County judges and surrogates are elective officers and their salaries are to be fixed by law (art. VI, secs. 14 and 15).

5. Sheriffs, county clerks, registers and district attorneys are elective officers (art. X, secs. 1 and 2).

The constitution contains no provision which would prevent the selection of coroners, superintendents of the poor, county treasurers and other county officers by appointment, nor, indeed, does it mention these officers specifically in any connection. It also does not require that the county board of supervisors be elected from the separate towns.

The reorganization of counties, however, must take into consideration more factors than are represented in the constitution:

1. The township system has become more or less crystallized, and it would be hard to overthrow, even if such a course were desirable.

2. A thorough reorganization of the system of state control would involve a more or less complete reconstruction of the state government and should not be undertaken without elaborate investigation.

3. The reorganization of the counties should not be made general and mandatory at this time, because most of them are not sufficiently conscious of the need of change.

From these considerations, it is evident that, whatever changes are attempted, they must in some way or another, be instituted by local initiative. Two devices suggest themselves:

1. A county charter on the style of the California "home rule" method, and

2. An optional county law which may be adopted by local referendum.

The California method involves the election of a board of freeholders which has power to frame a charter, covering the organization of the county government but not conferring any new powers upon it. By the terms of the constitution, all county officers except supervisors and superior judges may be made appointive. Upon completion, the charter is submitted to the voters for ratification.

This method, from the New York standpoint, is open to several objections: In a State where the tendency in administration is towards centralization it would probably be undesirable to have

too much diversity in the forms of county government. A second difficulty is that the counties, unlike those of California, have not the advantage of the experience of the cities in the framing of charters, and it is questionable whether sufficient popular interest and experience in county affairs could be brought to bear in most of the counties to insure the making of a good charter. Lastly, the adoption of the California method would probably call for constitutional amendment.

The second suggestion for an optional form of county government to be incorporated in the present county law and to be adopted by local referendum, is quite feasible. This principle is in fact recognized in the county law itself, wherein it makes provision for submitting to the people the question of establishing the office of county comptroller. Such an arrangement would enable any county so disposed, to set aside the present form of government without in any way affecting the interests of other counties or threatening the unity of the state system. The laws of Illinois and New Jersey give such an option to counties and a constitutional amendment is contemplated in Ohio, which will permit the legislature of that State to provide optional forms.

Granting the practicability of this procedure and having in mind the before-mentioned constitutional limitations, what might be suggested as a readily attainable ideal in the way of county reorganization?

A SPECIFIC PLAN OF REORGANIZATION

To begin with, it is of utmost importance so to revise the general plan of county government that popular control will be able more effectively to make itself felt upon the various county officers. The simplest way to do this is to concentrate public attention on a fewer number of elective officers. None but the most important should remain on the ballot, and these should be given sufficient power so that they may be held responsible for results.

This means, in the first place, a complete reconstruction of the board of supervisors. It is practically impossible to secure the highest efficiency and accountability to the people of the county,

when, as in Westchester County, there are thirty-eight members of this board, all chosen from localities and none of them identified with the county as a whole. This object can be accomplished in the following way:

1. Limit the individual supervisors to their town functions and allow them only such compensation as is now paid out of the treasury of the various towns.

2. Substitute for the present board of supervisors a board of either three or five members elected at large, according to the total population or assessed valuations of the county, the terms of the members to expire in rotation in such a way that after the first election not more than two supervisors shall be chosen at any one time. The salaries of the individual members should not exceed the compensation now allowed by law for attending meetings of the board. For the purpose of avoiding any possible conflict with the constitution, this body may still be called the board of supervisors, but its members may be designated "supervisors-at-large."

Having constituted this board, it will be possible under the constitution to realize some of the advantages of the short ballot. This can be accomplished by putting under the control of the board certain officers whose present functions are financially important but whose duties are not of a sufficiently interesting nature to attract the attention of the voters. These officers are the county superintendents of the poor, the county treasurer, and the county comptroller (where such an office exists.) None of these is concerned with the framing of county policies, and even now they are in theory and financially subordinate to the board of supervisors, with the possible exception of the coroners. As for the coroner, pending the time when the obsolete office shall be abolished and his necessary functions otherwise assigned, this officer should also be appointed by the district attorney.

No good purpose is served by keeping these officers on the elective list. On the contrary, they clutter the ballots at the general election, create fictitious issues and make voting difficult for the busy citizen. There is abundant positive reason, on the other hand, for their appointment. Such a method of selection would,

so far as the constitution now permits, unify the administrative responsibility within the county in the board of supervisors.

Such, in general, is the method now in operation in many of the states where the "commissioner" system is in operation. Several counties in New Jersey, including the two largest (Hudson and Essex) employ it. The success of commission government in American cities demonstrates its advantages.

The next step in reorganization would be to provide a permanent county executive under the control of the board of supervisors. He should have power to appoint, or at least to nominate, all the other appointive county officers except possibly the treasurer and county comptroller. He should investigate not only the appointive offices, but also those of the sheriff, district attorney and county clerk. He should make up the budget and in smaller counties should serve either in person or by deputy as the county purchasing agent. He should be a well paid official and the board of supervisors should be permitted to select a person not a resident of the county, at the time of his appointment. His tenure should be at the pleasure of the board, but it might be desirable if he were to be made removable by the Governor, as are other county officers.

Such an organization would duplicate in the county the type of government which is in use in every business corporation, in which the policies of the organization are determined upon by a board of directors and the details of operation carried out under the direction of a general manager. School departments in cities in which the city superintendent serves as the executive agent of the popularly elected board are similarly organized. Several American cities also are operating under the "city manager" plan, identical to this in every essential. In New Jersey Counties of the first class, which includes Hudson and Essex, there is an elective officer known as the county supervisor, who serves as the executive of the board of chosen freeholders, though with much greater independence than under the plan which the present writer contemplates. Some such plan must be adopted in the New York counties if they are to have a responsible, competent headship.

The small county board operating under a competent "county

manager" would, it is believed, lay the foundation for a really efficient county government. The present system invites waste and inefficiency because it is so little subject to control from any source. But a board of supervisors small enough to be watched and armed with effective means of guarding the public interests, would feel its responsibility. Such a board would have every incentive to appoint capable subordinates and to put into effect modern methods of administration such as centralized and standardized purchases of supplies, a scientific budget and cost and service records. The additional expense of the county manager's salary would be more than offset by the savings effected by cutting off the fees and mileage of the numerous members of the present county boards which are now paid from the county treasury. The results from more able management would be clear gain.

LEGISLATIVE NOTES AND REVIEWS[1]

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State Officers, Boards and Commissions Created and Abolished in 1913. The multiplication of administrative agencies of state government,—offices, boards and commissions, showed no signs of abating in 1913. The legislatures of thirty-five states contributed a total of two hundred and thirty-six such agencies created during that single year. In the same year seventy-nine were abolished and twelve were thoroughly reorganized.

In seeking to estimate the volume of this legislation, the determination of what to include is perplexing. There are found all gradations from instances of new functions entrusted to new independent agencies, through those less clearly innovations to those merely providing an additional inspector to extend the activities of an established department. Whenever a new office with a distinctive title and duties appears it is included in this review, though it be but a subordinate bureau or though the work may have been formerly carried on by some existing authority. Likewise, when an existing authority is given ex officio a second title and office it is enumerated. But when an existing authority is charged with new duties without a new title conferred or office created even though the work be new and distinct it is not counted.

Of the whole number enumerated, sixteen are subordinate bureaus of existing departments. In thirty-five cases some existing officer or board is made ex officio head of the new department; and in twenty-six others there is a combination of ex officio and appointed officials. It is a notable fact that not one of the new authorities, save certain in the ex officio class, is chosen by popular election.

The new creations are found in about equal measure in the far-western and the mid-western states. The northeastern follow with half, and the south with a third as many as either of the first two regions. The greatest number in individual states is to be found in Montana with eighteen, Oregon with seventeen and Kansas with fourteen. The num-

[1] The aim of this Department of the REVIEW will hereafter be to furnish notes of legislation of special significance to political scientists, and annual reviews of legislation of a distinctively political science character. Such subjects as constitutional amendments, nomination and election of public officers, legislative processes including direct legislation, executive and administrative changes, judicial reform, and the relation of state to local government and to the federal government, will be emphasized.

ber abolished makes the net increase in these states respectively seventeen, six and four; while ten creations each in Colorado and North Dakota and no discontinuances place those states in the lead of all except Montana. Five states having legislative sessions in 1913 created no new offices (Arizona, New Hampshire, New Mexico, South Carolina, Wyoming); New Jersey and Rhode Island but one each, although New Jersey cancelled her increase by one office abolished. Likewise did Washington and Idaho match their respective increases by corresponding eliminations. Two states show an actual decrease: Ohio creating nine and abolishing sixteen and Michigan creating two and abolishing three.

The range of authorities created is as broad as the field of state activity. No important branch save those of militia and state police are unrepresented. Of the chief groups of functions, the economic stands easily first in volume, followed in order by the protective (including labor), charities and corrections, education, finance and maintenance of the state. The marked preponderance of new authorities to satisfy economic needs and for the protection of labor and the public health as contrasted with the absence of new agencies for the preservation of the peace reflect the newer conception of the purpose of the state.

Another striking fact presented by a study of this legislation is the number of offices abolished. This movement, which is most marked in Ohio, Oregon and Kansas is due to a decided tendency to centralization rather than to a narrowing of the field of state activity. The centralizing movement hitherto so marked in charities and corrections is continued in the creation of the board of control in Oregon displacing no less than nine authorities and the board of corrections in Kansas superseding four. The same movement more recently seen in labor administration is represented by the industrial commission of Ohio taking the place of seven boards and the Kansas department of labor and industry consolidating four authorities. Now, the tendency appears in agriculture in the Ohio agricultural commission, the South Dakota live stock sanitary board and the Washington department of agriculture. The Kansas administrative board for educational institutions displaced four educational boards. Though accompanied by few consolidations the extension of the policy of centralization to tax administration is perceptible.

Among the more unusual combinations to be found are that in West Virginia the tax commissioner is ex officio commissioner of prohibition; the censorship of moving pictures is, in Connecticut, exercised by the state police; whereas in Ohio the same work is performed by the indus-

trial commission and in Idaho the public utility commission serves as tax commission. In Nebraska, the governor is made ex officio hotel inspector and also state veterinarian with a deputy in each case in actual charge of the department. This curious arrangement which has become an established practice in that state holds great possibilities in the direction of building up a highly centralized administration though it seems probable that economy was the real moving cause.

Even in the states where the most extensive consolidations have taken place there is little evidence of a broad appreciation of present chaotic condition of state administration or of a desire for any general reform in this direction. During this session, Ohio created nine separate authorities including a board for an institution for the needy blind, another for a soldiers and sailors home and an immigration commission and Kansas established four examining and licensing boards. Every one of these functions might well have been conferred on an existing authority.

An analysis of the whole mass of new legislation reveals the following facts:

In the economic group of activities, the new authorities relating to agriculture and kindred topics, include departments of agriculture created in three states (Montana, Ohio, Washington); and departments, bureaus or commissions of farm development (Washington), information (South Dakota), viticulture (California), horticulture (Colorado), dairying (Colorado, Montana), entomology (Montana, Oklahoma, Rhode Island, West Virginia), live stock sanitation (Nebraska, Oregon, South Dakota), sheep commissioner (Vermont), quarantine (Nevada), examination of veterinarians (Idaho, Montana), stock registry (Kansas), state fair (Kansas, Oregon), pure seeds (Oregon), grain inspection (Montana) and chemical laboratory (Tennessee). Of the sixteen authorities abolished from this field, fourteen were chiefly the result of the centralizing movements in Ohio, Washington and South Dakota. Though but one department of conservation was formed (Nebraska) not less than twenty-one other new agencies represent different aspects of the movement. Their range includes fish and game protection (Connecticut, Delaware, Florida, Illinois, South Dakota, Washington), water conservancy (California, Connecticut, Kansas, Nevada, Texas), geology and mineralogy (California, Oregon), state parks (Connecticut, Maine, Washington), public works (Ohio), public lands (Delaware), forestry (North Dakota), reclamation (Missouri). The eight agencies discontinued in this group all represent consolidations.

Banking and insurance show no offices abolished. Four states created banking departments (Arkansas, Tennessee, Vermont, West Virginia); seven established an office for the administration of the "blue sky law" (California, Michigan, Montana, Nevada, Ohio, Oregon, South Dakota) and one of these (Oregon) imposed on the same authority control over corporations in general.[2] One state reorganized its building and loan department (Ohio) and one created a supervisor of small loans (New York). Four states created insurance departments (Colorado, Iowa, Nebraska, Tennessee), and one effected a reorganization (Texas). One offered state insurance against hail on growing grain through a hail insurance commissioner (North Dakota).

Eleven states were added to the list of those having public utility commissions (Colorado, Idaho, Illinois, Indiana, Massachusetts, Maine, Missouri, Montana, Ohio (reorganized), Pennsylvania, West Virginia). In Missouri the remaining functions of its defunct railroad and warehouse commission were conferred on a warehouse commission. Ohio created a new canal commission. Five railroad and one canal commissions were discontinued to give place to these.

Eleven state highway departments were established (Arkansas, Colorado, Idaho, Illinois, Iowa, Missouri, Montana, North Dakota, Oregon, South Dakota, West Virginia) and one was reorganized (Ohio). Boards of accountancy were provided in nine instances (Delaware, Maine, Michigan, Nevada, North Carolina, North Dakota, Oregon, Tennessee, Wisconsin). An authority was created to supervise weights and measures in four cases (Connecticut, Montana, Oregon, Tennessee). Three departments of oil inspection are found (Missouri, North Dakota, South Dakota). In Washington such a department was merged in the department of agriculture. North Dakota established coal inspection, Montana, inspection of steam vessels, Florida, pilot commissioners, and Ohio, an immigration commission. Michigan abolished the office of salt inspector.

In the group of protective functions including labor, health, morals and fires, labor holds first place. Six states created a department of labor (Arkansas, Kansas, Minnesota, Montana, Ohio, Pennsylvania); minimum wage boards (or industrial welfare commissions) appear in five states (California, Colorado, Minnesota, Oregon, Washington), and industrial accident boards in seven (California, Connecticut, Iowa, Illinois, Nevada, Ohio, Oregon). One state created a department of

[2] Failed of popular ratification.

factory inspection (Tennessee); one an inspector of woman's working conditions (Delaware) and two, agencies for enforcing child labor laws (Delaware, Florida). One board of mediation is established (Nebraska); one commissioner of immigration and housing (California); two mine inspection departments (Colorado, Illinois) and one miners examining board (Illinois). The ten agencies abolished in the labor field included six merged in the new Ohio department and three in that of Kansas.

Public health authorities include new departments in two states (Arkansas, South Dakota), and reorganizations in two more (Iowa, West Virginia). A bureau of vital statistics appeared in Tennessee. Five states provided hotel inspection (Florida, Kansas, Nebraska (reorganized), South Dakota (reorganized), West Virginia). Food and drug departments were organized in two states (Nebraska, Vermont) and reorganized in one (South Dakota). Cannery inspection in Delaware and housing in Pennsylvania are new activities as is a tuberculosis sanitarium board in Kansas. Of supervising authorities for the professions and employments usually regulated in the interests of the public health, there were not less than eighteen examples including regulation of nurses (Arkansas, Florida, Kansas, Montana); optometrists (California, Nevada, South Dakota), barbers (Kansas, Michigan, Wisconsin); pharmacists (Nevada, Oregon reorganized); chiropractors (Kansas); medicine (California); embalmers (Colorado); midwives (Connecticut); osteopaths (Kansas) and dentists (Oklahoma). The protection of public morals is the purpose of a racing commission in California; athletic commissions in Montana and Wisconsin, censors of moving pictures in Ohio and a commissioner of prohibition in West Virginia. Finally, in this group a fire marshal's department was established in three states (Indiana, Kansas, North Dakota).

The care of the dependent, defective and delinquent gave rise to the creation of five boards of charities and corrections (Arkansas, Kansas, Maine, Nebraska, Oregon), that in Maine alone being of the supervisory type. Authorities for the control of a great variety of institutions were created as follows: Industrial home for women (Pennsylvania), school of industry (Nevada), schools for feeble minded (Connecticut, Pennsylvania), hospital for nervous diseases (Nevada), insane asylum (Montana), institution for the blind (New York, Ohio), soldiers' home (Ohio), Penal Farm (Indiana), and an institution for inebriates (Pennsylvania). A group of authorities concerned especially with children includes: a bureau of juvenile research (Ohio), juvenile court commissioners (Vermont), and bureaus for the protection of children,

defectives and animals (Texas, Washington). Pardon or parole boards were created in four states (Massachusetts, Missouri, Montana, Tennessee). Seventeen of the eighteen discontinued authorities have their functions absorbed in the centralized boards of Arkansas, Kansas, Oregon and Nebraska.

The legislation on educational administration includes the creation of a board of education in two states (Idaho, North Dakota) and a reorganization in a third (California). Kansas created a central board for her higher institutions of learning and Delaware established the office of commissioner of education. Text-book commissions were provided for in two states (Kansas, Montana); New York created a board of control for a nautical school and a free library commission was formed in South Dakota. Here again the elimination of offices comes from centralizing legislation, chiefly in Idaho, Kansas and North Dakota. Historical interests were to be served by the creation of a department of public records and archives in Indiana and New Jersey, an historical commission in Pennsylvania, and a monument commission, a battle field commission and a board of geographic names in New York.

Six permanent tax commissions were set up (Florida, Idaho, Montana, Nevada, North Carolina, South Dakota). Tennessee acquired a state auditor to act also as examiner of accounts; New York a board of efficiency and economy and a board of estimates, and North Dakota and Oregon provided for emergency boards of finance; Delaware established a board of supply while Oregon merged a similar institution in its board of control. South Dakota abolished its board of equalization as did Nevada the office of license and bullion tax agent. Three states established examiners of public accounts but New Jersey transferred the work to the comptroller while Utah abolished the office entirely.

Under the general function of maintenance of the state may be grouped civil service commissions in two states (California, Connecticut), and reorganized in another (Ohio). In the same category may be placed bureaus of legislative reference of two states (Illinois, Indiana reorganized) and a miscellaneous list including a commission for uniformity of legislation (Colorado), printing department (Oregon, South Dakota), bonding department (North Dakota), and a board of examiners of voting machines (Oregon).

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Legislation of 1913 Affecting Nominations and Elections: The most interesting and doubtless the most significant developments in election laws revealed by the legislation of the various States in 1913 indicate a general strengthening of the direct primary for party nominations, the growth of the non-partisan primary and election for judges and municipal officers, the gradual adoption of the short ballot principle, and the extension of "corrupt practices prevention" measures. The most noteworthy of the proposals during the year are registration by affidavit, voting by mail, a double election in recall proceedings, and provision for new parties in the primaries. Following is a somewhat detailed review of the legislation for the year affecting nominations and elections.[1]

Equal Suffrage. Of fundamental importance is the extension of the franchise to include women in many of the States. A constitutional amendment for equal suffrage which passed the Nevada legislature in 1911 was passed again in 1913[2] and will be submitted to the voters of that State in November, 1914. At the same time similar amendments passed in 1913 will be voted upon in South Dakota[3] and Montana.[4] Resolutions proposing such amendments, passed by the legislatures of New York,[5] Pennsylvania[6] and Iowa,[7] must be passed at the sessions of 1915 before being submitted to the electors. North Dakota's act[8] admitting women to the electorate is subject to referendum in 1914. The courts have not yet passed upon the Illinois law[9] conferring on women the right to vote for a number of offices created by statute and upon all questions submitted to voters on referendum. Women are not entitled to vote for most state and county officers under this enactment. North Dakota[10] also introduces a constitutional amendment reducing the residence requirements for the exercise of the suffrage from six months to three months in the county and from ninety days to sixty days in the precinct. This amendment must pass again in the session of 1915, and be submitted to the voters in 1916.

Registration of Voters. Indiana[11] adopts a compulsory registration law, in which is included provision for registration by affidavit of voters

[1] The legislatures of Alabama, Kentucky, Louisiana, Maryland, Mississippi, Vermont and Virginia were not in session in 1913.

[2] Laws 1913, p. 781.
[3] Laws 1913, p. 175.
[4] Laws 1913, p. 1.
[5] Laws 1913, p. 2226.
[6] Laws 1913, p. 1481.
[7] Laws 1913, pp. 426 and 431.
[8] Laws 1913, p. 200.
[9] Laws 1913, p. 333.
[10] Laws 1913, p. 122.
[11] Laws 1913, p. 528.

who on account of illness, etc., are unable to appear before the board of registry in person on registration day. Similar provision for registration of absent voters is made by Oregon[12] and Nevada.[13] Georgia[14] provides for a permanent register to be made up by the tax collectors and checked by boards of registrars. Montana[15] also provides for permanent registration, but an elector who fails to vote at a regular election or who cancels his registration must register anew. In Colorado,[16] Oregon[17] and Idaho[18] similar provision is made for erasing from the permanent roll all names of those who fail to vote at general elections. Oregon[19] also adopts a somewhat cumbersome card index system of keeping the register.

Nominations. Pennsylvania[20] repeals its primary law of 1911 and adopts a state-wide primary of the "closed" type. A state party is one that cast 2 per cent of the vote in the last general election. The state primary is to be held in May. Florida[21] adopted a mandatory state-wide primary law applicable to all elective officers except in cities and to political committees. A political party is one which polled more than 5 per cent of the total vote cast at the last preceding general election in the State or in any political sub-division. The primary is held in June. Registrations for the primary may be received during February and March. No candidate may be assessed more than 2 per cent of his annual salary or compensation for campaign expenses. There is a noticeable tendency to hold the primary closer to the elections. Following Wisconsin's lead Illinois[22] and Nevada[23] change the state primary from the spring months to September. The following States make provision for the participation of new parties in the primaries: California,[24] Kansas,[25] Michigan,[26] New Hampshire[27] and Wisconsin.[28] Minnesota[29] adopts an act authorizing a political party to change its name by calling a convention and passing a resolution for that purpose. California,[30] Nevada,[31] and Pennsylvania[32] require the voter on regis-

[12] Laws 1913, p. 623.
[13] Laws 1913, p. 499.
[14] Laws 1913, p. 115.
[15] Laws 1913, p. 171.
[16] Laws 1913, p. 262.
[17] Laws 1913, p. 628.
[18] Laws 1913, p. 368.
[19] Laws 1913, p. 623.
[20] Laws 1913, p. 719.
[21] Laws 1913, p. 242.
[22] Laws 1913, p. 310.
[23] Laws 1913, p. 510.
[24] Laws 1913, p. 1379.
[25] Laws 1913, p. 305.
[26] Laws 1913, p. 201.
[27] Laws 1913, p. 752.
[28] Laws 1913, p. 956.
[29] Laws 1913, p. 605.
[30] Laws 1913, p. 1379.
[31] Laws 1913, p. 517.
[32] Laws 1913, p. 1043.

tering to state his party affiliation as a condition of participating in the primary. Michigan[33] on the other hand adopts the "open" primary.

Non-Partisan Primaries have been adopted in varying forms and degrees for city elections in these States: Minnesota,[34] Missouri,[35] Pennsylvania,[36] Tennessee[37] and Texas.[38]

Non-Partisan Nomination and Election of Judges doubtless constitutes the most important advance made during the year. Minnesota has already successfully tried this plan of electing judges and is now followed by Idaho,[39] Iowa,[40] Kansas,[41] Nebraska,[42] Pennsylvania[43] and Wisconsin.[44] Missouri[45] yields its partisanship in a half-hearted manner. Judges are to be nominated in each circuit in a convention made up of delegates chosen directly by each party. Not more than half the nominees may be from any one party and the names of all the candidates are to be printed in every party column on the official ballot. North Dakota[46] will hereafter choose its state superintendent of public instruction and its county superintendents of schools by the non-partisan route. It may be seriously doubted, however, whether the non-partisan movement is not over-reaching itself when it invades the field of political offices as it does for the first time in Minnesota,[47] which provides for non-partisan election of members of the state legislature.

Rotation of names on the ballot is adopted in Missouri[48] and Ohio[49] for primaries in some cities, and by Nebraska[50] for the non-partisan judicial elections.

North Dakota[51] abandons preferential voting in the primaries.

Presidential Preference Primaries. Seven States adopt some means for the expression of popular choice for party candidates for president. In Illinois[52] and New Hampshire[53] delegates and alternates to the national conventions are elected directly in the primaries, and may pledge themselves in advance of the primaries to support particular candidates. In Ohio[54] and Texas[55] in addition to electing delegates and alternates

[33] Laws 1913, p. 201.
[34] Laws 1913, pp. 268 and 412.
[35] Laws 1913, p. 420.
[36] Laws 1913, pp. 568 and 1001.
[37] Laws 1913, special session, p. 576.
[38] Laws 1913, p. 36.
[39] Laws 1913, p. 347.
[40] Laws 1913, p. 91.
[41] Laws 1913, p. 309.
[42] Laws 1913, p. 247.
[43] Laws 1913, p. 1001.
[44] Laws 1913, p. 558.
[45] Laws 1913, p. 334.
[46] Laws 1913, p. 202.
[47] Laws 1913, p. 412.
[48] Laws 1913, p. 339.
[49] Laws 1913, p. 769.
[50] Laws 1913, p. 247.
[51] Laws 1913, p. 360.
[52] Laws 1913, p. 310.
[53] Laws 1913, p. 711.
[54] Laws 1913, p. 478.
[55] Laws 1913, p. 88.

the electors express their preferences for president, but this "advisory" vote does not bind the delegates. In Iowa[56] the preference of the voters "instructs" the directly elected delegates, while in Minnesota[57] and Pennsylvania[58] it is binding on the delegates.

Elections. In anticipation of the adoption of the seventeenth amendment to the federal constitution, the following States make provision for the direct election of United States senators: California,[59] Colorado,[60] Connecticut,[61] Florida,[62] Georgia,[63] Idaho,[64] Illinois,[65] Iowa,[66] Minnesota,[67] New Hampshire,[68] North Carolina,[69] Pennsylvania,[70] Tennessee[71] and Wisconsin.[72] In these States nomination and election are in the same manner and at the same time as for state officers or for representatives in congress. In several cases provision is made for filling vacancies by temporary appointment to be followed by special election.

The short ballot principle gains ground steadily. For cities it is adopted of course in connection with the commission form. The most important step in this direction is taken by Ohio[73] which submitted in November, 1913, amendments to its constitution to provide for appointment instead of election of township officers and of all state officers except the governor and lieutenant-governor. These amendments were decisively defeated. In addition Ohio[74] enacted that the clerk of the supreme court is to be appointed by the court and the state food and dairy commissioner is to be appointed by the governor. Both officers were formerly elected. Similarly Iowa[75] provides for the appointment by the supreme court of its clerk and reporter formerly elective. The short ballot idea also expresses itself in the lengthening of the term of office, as in Minnesota[76] and Wisconsin[77] where a number of county officers are to serve four years instead of two, and in the latter State, county judges are to be elected for six years instead of four. An act of Illinois[78] increasing the term of office of clerk, treasurer and alderman

[56] Laws 1913, p. 99.
[57] Laws 1913, p. 654.
[58] Laws 1913, p. 719.
[59] Laws 1913, p. 237.
[60] Laws 1913, p. 267.
[61] Laws 1913, p. 1839.
[62] Laws 1913, p. 277.
[63] Laws 1913, p. 135.
[64] Laws 1913, p. 433.
[65] Laws 1913, p. 307.
[66] Laws 1913, p. 92.
[67] Laws 1913, p. 756.
[68] Laws 1913, p. 569.
[69] Laws 1913, p. 206.
[70] Laws 1913, p. 995.
[71] Laws 1913, p. 396.
[72] Laws 1913, p. 825.
[73] Laws 1913, pp. 993 and 995.
[74] Laws 1913, pp. 10 and 24.
[75] Laws 1913, p. 93.
[76] Laws 1913, p. 668.
[77] Laws 1913, p. 649.
[78] Laws 1913, p. 140.

in Chicago from two years to four, was to have been voted on by the people of Chicago, April 7, 1914.

Sweeping ballot reforms were enacted in Kansas[79] which adopted the Massachusetts form of ballot, party designations after the names of candidates, and rotation of names, but no means of voting a straight ticket. Kansas provides separate ballots for township, city or ward, and general elections; Ohio[80] does the same for presidential electors as well as for township and municipal offices. Idaho[81] abolishes the party emblem. The New Jersey plan of envelope voting is adopted by Delaware.[82] Under new California laws[83] voters receive by mail sample primary ballots (if they are registered for the primaries) and sample election ballots. A new check against fraudulent ballots is the use in Nevada[84] of specially water-marked paper, arranged to show the water-mark when the ballot is folded, the design to be changed from year to year.

Minnesota,[85] Missouri,[86] Nebraska,[87] North Dakota[88] and South Dakota[89] now permit voting by mail by those unavoidably absent from their precincts on voting day.

Recall. In addition to being adopted widely in connection with commission form of government, the recall makes headway as an independent reform movement. Kansas,[90] Minnesota[91] and Wisconsin[92] will submit for popular ratification in 1914 consitutional amendments providing for the recall of all elective and appointive offices, except—in Wisconsin only—judges. In accordance with amendments adopted in 1911 and 1913 respectively, Washington[93] and Michigan[94] enact detailed recall statutes, the latter excepting judges from the operation of the law. Nevada[95] adopts the recall for all public officers, and Ohio[96] and Missouri[97] for officers of cities in certain classes. Under the operation of the statute in all States named above, except Nevada and Wisconsin, the recall election creates a vacancy which is filled later at a special election, i.e., the officer against whom the recall petition is

[79] Laws 1913, p. 297.
[80] Laws 1913, pp. 59 and 520.
[81] Laws 1913, p. 416.
[82] Laws 1913, p. 152.
[83] Laws 1913, pp. 1180 and 1379.
[84] Laws 1913, p. 362.
[85] Laws 1913, p. 365.
[86] Laws 1913, p. 323.
[87] Laws 1913, p. 613.
[88] Laws 1913, p. 206.
[89] Laws 1913, p. 271.
[90] Laws 1913, p. 568.
[91] Laws 1913, p. 902.
[92] Laws 1913, p. 1209.
[93] Laws 1913, p. 454.
[94] Laws 1913, p. 608.
[95] Laws 1913, p. 400.
[96] Laws 1913, p. 767.
[97] Laws 1913, p. 452.

filed has opportunity to have his case considered wholly on its merits instead of being obliged also to compete with other candidates.

Corrupt Practices. More or less complete corrupt practices laws were passed in Arkansas,[98] Florida,[99] Michigan,[100] Missouri,[101] Montana,[102] Nevada[103] and South Dakota.[104] Some changes were made in California,[105] Ohio[106] and Indiana[107] the most interesting being that of the the last-named State which attempts to do away with "mud slinging" campaigns by prohibiting the publication of anything—including cartoons—injurious to persons or companies for the purpose of influencing elections.

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Absent Voters: In 1911, the Kansas legislature, and in 1913, the legislatures of Missouri and North Dakota enacted laws which permit voters who are absent from their regular election districts on the day of an election to send home their ballots by mail from any point within their respective States, and to have these ballots counted by the proper local officials before the final result is officially announced. Similar bills were introduced in the last session of the Pennsylvania and the Wisconsin legislature. In November, 1914, the voters of Michigan will vote upon a proposed amendment to their slate constitution which, if adopted, will authorize the legislature of that State to provide some system of voting by mail for the benefit of qualified electors "in the actual military service of the United States or of this State, or in the army or navy thereof, in time of war, insurrection or rebellion;" also for "any student while in attendance at any institution of learning, or any member of the legislature while in attendance at any session of the legislature," and for commercial travelers. Three different bills are now (April, 1914) pending in the Massachusetts legislature to permit voters absent from their regular voting districts on state and national election days, to have their votes registered and counted. One of these bills also covers the case of voters who are detained from the polls by reason of sickness.

[98] Laws 1913, p. 1253.
[99] Laws 1913, p. 268.
[100] Laws 1913, p. 189.
[101] Laws 1913, p. 464.
[102] By initiative and referendum, Laws 1913, p. 593.
[103] Laws 1913, p. 476.
[104] Laws 1913, p. 277.
[105] Laws 1913, p. 396.
[106] Laws 1913, p. 578.
[107] Laws 1913, p. 489.

The omission in the constitutions of Kansas and Missouri of any clauses requiring secrecy in voting has made possible the adoption of a very simple system of voting by mail for intra-state voters, in which it appears that a reasonable degree of secrecy has nevertheless been insured. The laws of these two States are substantially alike. They provide, in brief, that when a voter is absent from his regular voting place on the day of a *general election*, he may present himelf during voting hours at a polling place in the town or city where he temporarily happens to be, and there sign an affidavit before the election officers. In this affidavit, the voter makes oath to the fact that he is a properly qualified voter of ——— district, in ——— county; that by reason of his occupation or business as ——— he is required to be absent from his regular voting district; and that he has not voted elsewhere at this election. The absent voter is then given an official ballot and permitted to enter a voting-booth and there mark his ballot. The ballot is then folded with the marks concealed, endorsed by an election official as "the ballot of A. B., an absent voter of ——— district in ——— county," and placed with the affidavit in an envelope which is sealed, directed, and sent by mail to the proper official in the absent voter's home county. There, at the appointed time, it is opened and counted before the result of the official canvass is declared. The canvassing officials are forbidden, under severe penalties, to disclose how the absent voter marked his ballot.

The Kansas law went into operation at the last presidential election and about five thousand voters took advantage of it. When one recalls that the Democratic candidate for governor was elected by a plurality of only 31, the potentiality of the "mail vote" can easily be understood. So far as the writer has been able to discover, the innovation met with very general approval, and the mail vote was handled by the election officials in a very satisfactory manner. One high Kansas official writes, "I am sure that Kansas likes it so well that it will not be repealed in this generation at least."

While the Kansas and Missouri acts restrict the right to vote by mail to absent voters who are within the boundaries of the State and apply only to *general* elections, the North Dakota act of 1913 apparently makes it possible for not only intra-state absent voters to vote by mail but also for voters outside the State to enjoy the same privilege; and at the same time the law is made to cover *primary* as well as general elections. Furthermore the North Dakota act embodies an ingenious attempt to provide a system of voting by mail which shall conform to the constitu-

tional requirement that "all elections by the people shall be by secret ballot."

Any fully qualified voter in North Dakota who expects to be absent from his county on the day of a primary or general election may apply to the county auditor, within thirty days preceding the election, for "an official absent voter ballot" to be voted at such election. These ballots are to be of the same size, form and "texture" as the regular official ballots, "except that they shall be printed upon tinted paper of a tint different from that of the sample ballots." Upon receipt of the proper written application, the county auditor is required to transmit or deliver to the voter one of these absent voter ballots, together with a return envelope addressed to the county auditor.

The absent voter may mark his ballot at any time prior to the closing of the polls on election day, but marking is surrounded by certain formalities. The voter must go before some official having a seal and authority to administer oaths, must exhibit to said official his unmarked ballot and the envelope, and must make oath to the affidavit printed on the back of the envelope that he is a properly qualified voter, that he expects to be absent from his county on the day of election, and that he will have no opportunity to vote in person on that day. Then in the presence of the magistrate and "no other person," the voter marks his ballot, "but in such manner that such officer can not see the vote," folds the ballot with the mark concealed, and encloses it in the envelope which is securely sealed. The magistrate certifies underneath the affidavit on the envelope that all these formalities have been complied with, after which the ballot is mailed by the voter, postage prepaid.

When received by the county auditor, that official must forthwith enclose the ballot and envelope, together with the voter's written application, in a larger envelope which is securely sealed and endorsed with the name of the proper voting precinct where the absent voter resides, the name, title and address of the county auditor, and the words: "This envelope contains an absent voter ballot and must be opened only on election day at the polls while the same are open." The county auditor is required to transmit the ballot, envelope, and written application to the judge or inspector of election in the precinct where the absent voter resides.

At any time between the opening and closing of the polls on election day, the inspector of election first opens the outer envelope only, and compares the signature on the application blank with the signature affixed to the affidavit. If the signatures correspond and the affidavit

is sufficient, and if the voter is duly qualified and has not already voted at this election, the judge of election opens "the absent voter envelope in such manner as not to destroy the affidavit thereon," and takes out the ballot, and, "without unfolding the same or permitting the same to be opened or examined," deposits it in the ballot box to be counted as if cast by the voter in person; the voter's name is then checked on the voting list.

If the affidavit should prove to be insufficient, or if the signatures should fail to correspond, or if the voter should prove not a duly qualified elector of that precinct, such vote is not allowed, but "without opening the absent voter envelope," the election inspector marks across the face thereof, "Rejected as defective," or "Rejected as not an elector," as the case may be.

The law contains the further provision that the voter may mark his ballot before, as well as after, he leaves his own county; and that in case the voter unexpectedly returns to his precinct on or before election day, he shall be permitted to vote in person, "provided his ballot has not already been deposited in the ballot box." Appropriate penalties are of course provided for violations of the act and for false swearing.

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Constitutional Amendments: That we are witnessing a social, not to say a political revolution is indicated by the number and content of constitutional amendments proposed or adopted in recent years. The lack of uniformity in the methods of amendment as well as the irregularities as to publication of proposed amendments tend to cast doubt upon the results of any attempt at a correct enumeration of the year's product.

It would appear, however, that no less than two hundred amendments were acted upon in the various States either by legislatures, or the voters at the polls.

Since the year 1913 was a year of many legislative sessions and few elections, the proposals of amendments far outnumbered the adoptions. No less than 102 received legislative approval or were initiated by petition and referred to the people for vote in 1914; 44 more were proposed by legislatures and are awaiting the action of a second legislature before going to the people. During the year 56 amendments came up for final action and of these 38 were approved and became parts of the respective constitutions.

The constitutional output as enumerated above has been somewhat curtailed by court decisions. In Arkansas 9 sections in amendment were proposed by the legislature but it has been held by the supreme court of that State that but 3 amendments can be submitted to the people at any election. In Indiana, the legislature proposed 22 amendments which were referred to the legislature of 1915. Certain irregularities in legislative procedure have raised the question, still unsettled, whether these were properly proposed. Furthermore, under the constitution of the State when an amendment has been proposed and is awaiting a vote by the people, no new amendment can be proposed. It was recently uttered as dictum in the case of Ellingham vs. Dye (99 N. E. 1) that an amendment which has failed to secure a constitutional majority either for or against is still pending. An amendment voted on at the general election in 1910 failed of such constitutional majority and so is held to be still pending. In view of all these circumstances the status of the 22 Indiana amendments is, at least, not beyond question.

Of the 18 amendments relating to the structure and functions of the legislative department, 8 have reference to the pay of legislators. One prevalent form of petty graft is attacked by a California amendment which would limit the expenditures for legislative attachés. North Carolina is seeking to put an end to the flood of special, local and private acts including municipal charters which have inundated its statute books. South Dakota changes the legislative term from two to four years; Minnesota fixes the number and distribution of senators and in South Dakota the unwisdom of an ironclad limitation of sessions to sixty days has led to a proposal to stop the compensation at the end of sixty days. Indiana directs a codification of the laws. Details of procedure are the subject of the remaining amendments in the group.

Among those relating to the organization of the executive department no marked trend is noticeable. In Ohio an attempt to introduce the short ballot by making the governor and lieutenant-governor alone elective met with defeat. Likewise the proposal made in Pennsylvania to abolish the office of secretary of internal affairs leaving the various bureaus of that department as disconnected departments runs counter to the ideals of students of administration. But in Oklahoma the board of agriculture is reduced to five members. In Indiana it is proposed to extend the terms of various officers from two years to four years with ineligibility for a succeeding period of four years. Arkansas proposes to create the office of lieutenant-governor. Indiana would

permit the governor to veto specific clauses or items in bills. Ohio permitted women to serve on certain administrative boards but Massachusetts declined to permit women to serve as notaries.

The amendments relating to the judicial department are in most cases devoted to details of organization, increase in numbers, or changes in distribution. Indiana would permit the legislature to fix the judicial term at from six to twelve years. California would limit the setting aside of judgments or granting new trials to cases where such action is necessary to avoid a miscarriage of justice. In Nebraska it is proposed that in civil and minor criminal cases a verdict may be rendered by agreement of five-sixths of the jury while in Minnesota in a supreme court of seven, no statute could be declared unconstitutional without the concurrence of at least five justices.

The extension of the suffrage to women was defeated at the polls in Michigan and will be sent to popular vote in South Dakota in 1914. New York, Pennsylvania, Iowa and North Dakota have referred a like measure to a second legislature in 1915. Maryland has permitted the legislature to transfer the burden of guilt from the vote seller to the vote buyer. In Michigan provision is to be made for students, legislators and commercial travelers who wish to vote when absent from home. California prepares to provide a preferential ballot and Indiana would restrict the ballot to those who are citizens of the United States.

The initiative, referendum and recall still command their full share of attention. There seems a tendency to restrict by various devices the application of these popular expedients. In South Dakota, the percentage of voters necessary to secure action on both the initiative and the referendum is fixed at five. In North Dakota, two amendments embodying the initiative and referendum are offered. The initiative is secured to 25 per cent of the voters in each of one-half the counties of the State. Such measure, if not passed by the legislature, goes to the people as may any legislative act except an emergency measure on petition of 10 per cent in a majority of the counties. Referenda may be had only at regular elections and if rejected at the polls may not be offered again in six years.

Iowa allows the legislature to fix the percentage of the initiative between 12 and 22 per cent in each congressional district and for the referendum between 10 per cent and 20 per cent.

In Minnesota a constitutional amendment would be proposed to the legislature on petition of 2 per cent of the voters and if it be not submitted to the voters in the same form a petition of 8 per cent of the voters

will result in a referendum. Such amendment becomes operative if adopted by a majority of those voting at the election or by four-sevenths of those voting on the amendment if not less than three-sevenths of the total number voting vote on the amendment In the case of statutes, 2 per cent is sufficient to initiate and if such law be not passed, the petition of 6 per cent will cause a referendum.

Michigan adopted a provision for an initiation of laws by 8 per cent which if not passed by the legislature may go to a referendum on petition of 5 per cent. The legislature may prepare a substitute act which shall be presented for approval along with the initiated measure. The same State provided for the initiative of constitutional amendments by petition of 10 per cent.

Wisconsin proposes an original scheme. Initiative must be through some member presenting the proposal in the legislature. If a constitutional amendment so proposed be not passed, a petition of 10 per cent of the voters will carry the measure to a referendum. In case of a statute presented as above, 8 per cent of the voters not over one-half of whom are in one county may procure a referendum.

Missouri would forbid the use of the initiative as a means of classifying property or of introducing the single tax. The referendum alone is provided for in Texas on petition of 20 per cent and in Massachusetts by the legislature itself. Michigan, Wisconsin and Indiana have provided for the recall of officers except judges; Minnesota and Kansas make no exception of judges.

The subject of finance and taxation gives rise to the largest number of amendments of any of the topics classified. The movement away from the uniform general property tax is indicated by the fact that Maine and Kentucky adopted provisions for the classification of property. One State, Pennsylvania, rejected the same and five others, Kansas, North Dakota, Nebraska, North Carolina and Indiana proposed the same to be voted on later. Colorado proposes to centralize its taxing system in the hands of a board of equalization; Oklahoma provides for a state tax in aid of common schools and Missouri would provide for both state and local special taxes for roads. In Wisconsin it is proposed to sell bonds to create a fund to be loaned on landed security to individuals for the purchase or improvement of farms. Other proposals in this group are for tax exemptions, funding operations and details of the tax system.

In both North Carolina and California propositions are made for incorporation of cities by general law while in Indiana it is proposed to

permit a return to the system of special charters. In Oklahoma, localities may vote on the organization or dissolution of township government. The introduction of the home-rule charter system in Wisconsin is proposed and in California home-rule charters for cities and counties are the subject of amendment. Matters of municipal indebtedness are touched on in nine adoptions or proposals in three of which debts contracted for self-sustaining utilities are not included in connection with constitutional debt limits.

Among the amendments affecting public works, highways claim the greatest measure of attention, no less than five States, Pennsylvania, Delaware, Michigan, Missouri and North Dakota having considered proposals looking to expenditures for that purpose. Sea walls, drains, irrigation, state printing plant, preservation of navigable waters, water supply and power and terminal elevators are all subjects of one or more proposals. The principle of excess condemnation is included in measures adopted in New York and Maryland and similar proposals are sent to the people in 1914 in California and Wisconsin. The growth of interest in questions of forest conservation is witnessed in two amendments in New York, one ratified by the people and one proposed relating to the administration of forest reserves while Minnesota would authorize the creation of forests on public lands and permit bounties on the propagation of forests on private lands. Other proposed amendments in Wisconsin, South Dakota, Oklahoma, and Minnesota relate to the utilization of public lands.

Vermont and North Carolina are going over from the granting of corporate charters by special act to the system of general law. Oklahoma has voted to modify her drastic corporation policy by which certain utility corporations may buy, sell, or lease their property or franchises. Indiana and California would make slight modifications on the subject of corporate regulation. Michigan has sought without success to secure constitutional sanction for firemen's pensions and Missouri is to vote on the unique proposition of pensions for the blind.

Labor amendments chiefly take the form of sanction for workmen's compensation systems, such having been adopted in New York and Vermont and proposed in California, Pennsylvania and Indiana. In 1913, Pennsylvania rejected an amendment allowing the enactment of laws regulating hours of labor, wages and conditions for workers for the State or any civil division or for contractors of the State and also permitting compensation for injuries. Kentucky voted to permit the working of convicts on roads and bridges.

Wisconsin by two amendments seeks authority to establish state insurance. Pennsylvania proposes a measure touching on land titles and Washington seeks to restrict land holding by aliens. North Dakota finds it desirable to ask popular sanction in four amendments for the location and naming of various educational and charitable institutions. North Carolina will vote on making a six months school compulsory.

The method of amendment is changed in Colorado to allow popular initiative but no more than six amendments may be voted on at once. Wisconsin proposes to adopt by a three-fifths vote of each house in one legislature followed by popular vote. An Indiana proposal seeks the same end and provides that a political party may declare for or against an amendment and have the fact placed on the ballot. Maine will allow a vote on amendments at general as well as special elections. The manner of calling conventions is dealt with in California and Indiana. North Carolina proposes certain verbal changes in her constitution and to omit certain obsolete matter, while in Vermont the supreme court has been instructed to consolidate existing amendments with the body of the constitution. In addition to these Vermont has added a section to her bill of rights prohibiting conviction of treason and felony by the legislature. California will regulate elections of United States senators, Indiana would admit negroes to the militia and authorize the legislature to regulate the practice of law.

Such is, in brief, the constitutional output for 1913. While a considerable number of these measures are of a fundamental character a greater proportion are a necessary consequence of the pernicious habit of loading our constitutions with provisions of a purely statutory character. There are as yet no indications of a cessation of that practice. Neither is there apparent any serious attempt to grapple with the present evils of legislative and administrative inefficiency and to seek to apply remedial measures.

A tabular presentation of the results of the year's constitution making is as follows:

SUBJECT	RECEIVING FINAL VOTE IN 1913		TO BE VOTED ON IN 1914	REFERRED TO A SECOND LEGISLATURE	TOTAL
	Admitted	Rejected			
Legislative department	5	1	10	2	18
Executive department	4	7	8	6	25
Judicial department	4	1	10	4	19
Suffrage and elections	1	1	3	7	12
Initiative, referendum and recall	4	0	11	1	16
Finance and taxation	5	4	15	5	29
Local government including (State) local finance	2	1	15	4	22
Public works	3	1	11	2	17
Amendment and conventions	1	0	3	2	6
Lands and forests	2	0	4	2	8
Corporations	2	0	2	1	5
Pensions (civil)	0	1	1	0	2
Labor (including compensation)	3	1	1	2	7
Insurance	0	0	2	0	2
Land titles	0	0	1	1	2
Educational	0	0	2	1	3
Institutions	0	0	0	2	2
Verbal changes	1	0	2	0	3
Civil rights	1	0	0	0	1
Election of United States senators	0	0	1	0	1
Militia	0	0	0	1	1
Admission to bar	0	0	0	1	1
Totals	38	18	102	44	202

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CURRENT MUNICIPAL AFFAIRS

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In four large cities of the United States, each in a different section of the country, the results of charter-agitations and the consequent deliberations of charter commissions or boards of freeholders have reached concrete form, and, in all but one case, have been submitted to the electorate for adoption as permanent charters. These cities are Cincinnati, Seattle, St. Louis, and Buffalo, and their charters embody each one of the types of municipal organization now leading in public favor. Commission government is proposed for Buffalo and a modified form was recommended in the case of St. Louis. Seattle refused to adopt the city-manager plan, which included provisions also for a mayor and council of thirty elected from wards. In Cincinnati the plan was for a mayor and council of fifteen. A common feature of all is the reduction of electoral machinery in every direction.

The charter commission of the city of Cincinnati, which was chosen at a special election last July, presented the results of its work in the draft of a charter which was voted on at the election of July 14, 1914, and was rejected as being too radically different from the present charter. In brief, it was proposed that the government of the city be placed in the hands of a mayor and a council of fifteen members, chosen at large on a non-partisan basis from the city. These were to be the only elective officers, the term of office four years, one half of the councilmen retiring every two years. All other officers and positions were to be filled by appointment; the heads of the sixteen departments, save that of public finance, to be appointed by the mayor; and all sub-department officials and employees to be chosen by the head of each department concerned. The administrative departments were as follows: general administration, finance, sinking fund, law, civil service, public safety, social welfare, public service, highways, public utilities, parks and playgrounds, health, hospitals, university, city planning, and that of the Southern Railway. Full civil-service provisions

were supplied for "all officers and all persons occupying positions of trust or employment in the municipal government." The head of the department of finance was to be responsible to the council; the heads of all others to the mayor. Tenure of office for appointments was during good behavior; but the recall was provided, for adoption as a separate document, to cover the removal of any elective officer from his post after one year of his term had elapsed.

The proposed Seattle charter, which was defeated at the polls on June 30, was prepared by the freeholders elected for that purpose in March. Its important features were a simplified election system, including a short ballot, the abolition of primaries, nomination by petition, preferential voting, and biennial elections; a council of thirty elected from as many wards with purely legislative powers and that of appointing the city manager, corporation counsel, comptroller, treasurer, and clerk, all of whom were to have seats in the council body; a mayor to receive a salary of $5000, who was to preside over the council and act as head of the police department, as well as to appoint the members of several unpaid boards. The administration of the city fell to the lot of the city manager, with a salary of $12,000, who was subject to removal by the council and recall by the people. He was given supervision over the divisions of engineering, public utilities, streets and sewers, waterworks, lighting, building, fire protection, health and sanitation and contracts, purchases and supplies, and any other administrative divisions which the council might create. Several new departments and boards were provided for, and adequate civil-service provisions were included. At the special election for accepting or defeating the proposed charter, only about one third of the usual vote was polled, the bill being defeated by a majority of 5000 votes. The reason assigned for this overthrow is the fact that the people were unwilling that the city should revert to the ward system for the election of councilors. The feeling was current that the old charter, with its recent revisions providing for the various reforms inserted during late years, would serve very well if sufficient provision were made for a more economical and efficient administration resulting in better service for the city and lower taxes for the taxpayers. This, it was felt, could best be accomplished by means of a city manager, and that feature was incorporated in the new charter. This and other provisions in it were apparently well received; but the restoration of the ward system after its abolition four years ago was felt to be a very

unfortunate step. Already a charter-revision committee has been appointed from the Municipal League for the purpose of studying the existing charter and drafting such amendments as will preserve its favorable features as well as those in the defeated charter.

The voters of St. Louis adopted on June 30, by a majority of about 2000, the new charter which had been submitted for that purpose. A short ballot is the controlling idea of the new charter—a remedy for a situation which has been shown to be only second, in the multiplication of elective offices, to that in Chicago. Four city offices only are to be filled hereafter by election: mayor, controller, president of the board of aldermen, and the twenty-eight aldermen. No limit is set to the appointing power of the mayor, and his "official family," which constitutes a board of public service, is composed of the directors of public utilities, of streets and sewers, of public welfare, and of public safety. All administrative affairs are to be managed by the mayor and this board, working in close coöperation. Financial matters, however, are to be controlled by the board of estimate, made up of three elective officials. The efficiency board is an appointive body for the purpose of drafting civil service regulations. The charter provides for the initiative, referendum and recall, and the question of non-partisan elections and preferential voting is to be decided by a popular referendum. A good deal of interest is expressed on behalf of the new charter, which becomes effective sixty days after its adoption on June 30.

In Buffalo the supporters of commission government have had a long, up-hill fight, with a successful finish only lately in sight. In 1909 the voters of the city requested the commission form of government. When the bill was presented to the legislature in 1910, it was passed by the senate but it failed in the assembly; it met a similar fate at the hands of the legislatures of 1911 and 1912, the opposition being based on the inclusion of the initiative and recall in the bill. In the meantime more and more interest was being felt in the city itself toward the new charter, and in 1910–11 it was indorsed by the chamber of commerce and by nearly every civic and commercial organization. At this year's session of the legislature the charter-bill passed the senate unanimously and in the assembly it had only three members against it. By the New York state constitution, however, a local bill has to be submitted to the mayor of the city concerned as the representative of the city. Mayor Fuhrmann vetoed the bill, after holding the matter up for many days, on the ground that it

ought not to be submitted with other matters at the regular election next autumn and because of certain petty flaws in its phrasing. When the bill was resubmitted to the legislature, it was passed with a large majority by both houses. The ultimate adoption of the charter at the fall election is looked for.

The Toledo Railways and Light Company has offered to turn over to the city itself the operation of its street railways for a year in order to test the 3-cent fare plan under which, during the ten years of clamor for it, public officials have asserted it is possible to earn a good profit. The company offers to accept the proposed rate if the city can prove that it is practicable, but stipulates that if the plan does not prove so, the fare-schedule for the next five years shall be such as to enable the company to earn necessary costs and a reasonable return on the investment. Under the terms of the offer, fare-rates are to be those so long advocated by the city, that is, five tickets for 15 cents for all hours, 1 cent for children under eight years and not carried in the arms, 5 cents for single cash fares, universal transfers, and free transportation for policemen, firemen and sanitary officers of the city. The company also offers to provide two funds of $25,000 each: one for the salary of a commissioner or commissioners to serve the city as head of the system; and the other to employ expert street railway engineers to lay out an ideal modern system for Toledo. It is not known whether this fair offer will be accepted by the city and a stride thus made toward settlement of this much-discussed question.

The outcome of a two-years' fight between the city council of Gary, Ind., and the Gary and Interurban Railroad is a victory for the city council, and a 3-cent fare on all interurban railroads within the city limits will be in force beginning August 1. In this same connection it might be mentioned that 3-cent light in Cleveland has been proved a success just as 3 cents has been found to be a profitable street-car fare. According to a report recently issued, consumers' bills have been cut in two and a profit netted for the city. An ordinance was passed in Omaha on March 10, whereby the street railway company was compelled to sell tickets at the rate of seven for 25 cents.

Apropos of street-railway fares, it is interesting to note that a bureau of fare research has just been established by the American Electric Railway Association, although a committee of the association has been working on the same subject for several years. It is planned that the

bureau shall study the entire question of rates of fare, assemble data and facts for the use of member companies, and make available all possible information on this subject, as well as establish standards for its consideration.

An appeal has been made to property-owners in New York City to allow their vacant lots to be used as playgrounds for children. Several large plots of land have already been secured for this purpose, the city agreeing to protect owners from damage to their lands. The suggestion has also been made that the floors and roofs of the vast armories scattered throughout the city should be used as playgrounds for children during the summer months.

The first office of "public defender" to be filled in this country is that authorized in Los Angeles County under its new charter. Mr. Walter J. Wood is the public defender, and, assisted by four lawyers, aids those who cannot pay fees for counsel in civil as well as in criminal cases. No fees are charged for this defense afforded by public authority. Another first-time office is that filled by the first anti-noise policeman in Baltimore. This officer was appointed by the Baltimore police commissioners at the request of the anti-noise committee of the City Medical Society. In a report recently made, Officer Pease emphasized the large number of unnecessary noises, such as those made by whistle-blowers, roller skaters, automobile-horn soloists, persons musically inclined at unseasonable hours and in unsuitable places, hucksters and crowing roosters. So far as automobilists are concerned, the report states that over 235 owners of motor trucks and motor delivery wagons were warned effectively. Especial care is taken in Baltimore to enforce strictly the hospital-zone law.

At the annual convention of the Special Libraries Association, held in Washington on May 27 and 28, two sessions were devoted to topics of interest to municipal and reference libraries. These were on "Co-operative information getting" and on "The p'ace of the special library in other than academic efforts for training to greater efficiency in business, commerce, government and industry."

The Civic Exhibition, of Ireland, 1914, will take place at Dublin under the auspices of the Civic Institute of Dublin, Limited, from the middle of July to the end of August. The principa object of the promoters is "to illustrate, simply, clearly, and vividly," recent achieve-

ments in Ireland and to point the way to the solution of further problems of immediate interest. The government and municipal authorities, as well as many voluntary organizations, are coöperating in the scheme. Urban and rural administration will be represented and town planning will receive special attention. A prize of £500 has been offered for the best design for replanning the city of Dublin.

The first Canadian Good Roads Congress was held in Montreal during the days from the eighteenth to the twenty-third of May. Several hundred delegates attended the congress, coming from every part of the Dominion and from several states in the Union.

At least three tours in Europe, with European municipal progress as the objective point, are being conducted during the summer months. That under the auspices of the Institute of Educational Travel will be led by Mr. Robert S. Binkerd, secretary of the City Club of New York and will be primarily for city officials. Those cities will be visited and observed in which the most important municipal undertakings are best carried out. Mr. Binkerd will be assisted by Mr. E. E. Pratt, Prof. F. A. Fetter, Prof. W. E. Rappard, and Mr. E. G. Culpin. The municipal tour of Europe to be managed by the National Bureau of Municipal Research will be under the direction of Mr. S. S. McClure. The American Commission of Municipal Executives and Civic Leaders, assembled by the Southern Commercial Congress, has planned two tours, one to last thirty days and the other sixty. The shorter trip includes attendance at the convention of municipal executives in London and at the international urban exposition in Lyons, as well as a visit to Paris. In addition to this, the sixty-day tour will include visits to Belgium, Holland, Germany, Austria-Hungary, Italy and Switzerland.

The American City, in its July issue, has entered upon a two-fold undertaking. Henceforth its magazine will have, in addition to its present form, a "town and county edition" in response to the growing needs of these bodies and the increasing interest which is everywhere being shown in their progress. Beginning with the July number, therefore, the first thirty-two pages of each issue will be devoted, in the regular edition to articles referring particularly to the larger municipalities; in the town and county edition, these first thirty-two pages will be made up of articles which have especial interest and application for town, village and county problems. In determining the line of

division between these two varieties of municipalities, a population of 5000 will be used as the decisive point. The remainder of the magazine will be made up as usual of notes of happenings, publications, etc., which will be of common interest to all those concerned in municipal affairs.

The Detroit city plan commission some time ago initiated a competition for the improvement of Belle Isle as a municipal park. From the ninety designs submitted, it has selected seven preliminary architects and has also invited three other firms to submit plans—Messrs. Carrère and Hastings, McKim, Mead and White, and Cass Gilbert. Prof. E. A. Duquesne of Harvard University is acting as adviser to the commission.

In November, 1913, Mayor Harrison of Chicago, in accordance with an order passed by the city council, appointed a commission "to make a study into the subject of municipal markets and other agencies to bring the producer and the consumer into closer contact." The preliminary report of this commission was issued on April 27 (54 pp.) and contains, in addition to its initial recommendations, a collection of interesting statistics and other material resulting from its investigations. Figures are included which show in different ways steady increase in prices of foodstuffs since 1890, in Chicago, in Illinois, in different sections of the United States, and in the country as a whole; the increase in salaries over a period of years; and the rate of profit of the middleman on various commodities. In the section devoted to municipal markets in other cities of the country, the fact is brought out that Chicago and San Francisco are the only two cities of the eighteen in the United States having a population of over 300,000 in 1911, which make no financial provision for market places. This section includes a table showing receipts, expenditures, and value of land, buildings and equipment of municipal markets in these cities.

The commission recommends, in general, that plans be made for a comprehensive system of wholesale terminal markets under the control of the city, that retail markets be established whenever private retailers do not seem to be giving satisfactory service, and that farmers' markets be set up wherever needed. The report commends the practice of selling produce through peddlers, hucksters and push carts, believing that these perform a considerable service to certain classes of consumers and that the food supplied is both good in quality and cheap in price.

A city tribunal to investigate all charges and complaints is advocated. The commission is strongly in favor of a system of freight-handling by the city and interurban trolley lines during night and little-crowded hours, and recommends that this scheme be put into effect for rendering transportation of produce less difficult and more economical. A complete and final report on the findings of the commission will be made at the end of the next municipal year.

Another interesting report along the lines of municipal undertakings is that issued in December last on "Municipal and Government Ice Plants in the United States and Other Countries," which was prepared by Miss Jeanie Wells Wentworth for the president of the borough of Manhattan in New York City. This report covers seventy-eight pages. Facts and figures are given for the municipal ice plants at Weatherford, Okla., the first city in this country to enter the ice business on a commercial basis, and at New Britain, Conn.; the United States government plants in Washington, in the Philippine Islands, and at Panama; and municipal ice plants in foreign countries. The remainder of the report is devoted to a consideration of the agitation that cities should engage in the ice business, with especial attention to the demand in New York City for a plant to provide ice for municipal consumption. In conclusion, it is pointed out that the remedy to the widespread feeling of indignation against the high cost of ice seems to lie in municipal plants and that the burden of proof would seem to establish the right of the municipality or government to enter the business of producing ice. The cost of production is shown to be low, especially where it can be made in connection with a plant used for some other purpose.

The city of Cleveland changed its time schedule at midnight on April 30 from central to eastern time. The reason given for the change is that an hour of daylight is gained every day. The departure was accompanied with a good deal of confusion, especially among the railroads, some of which refused to make the change.

It is probable that the League of Minnesota Municipalities, through the municipal reference bureau established at the University of Minnesota, will maintain for the benefit of the small municipalities of the state an engineering service which will provide them with expert assistance and advice on questions of engineering coming up from time to

time. Another branch of this league's service will be set in operation with the presentation of the results of the survey of the village of Herman, Minn., which is to be made by the league. Herman, with a population of about 800, was selected as a representative town of the smaller places which are developing in the State without definite plans for future growth. After a comprehensive survey of the village in all its relations, the findings of the committee will be presented to a community meeting.

The experiment of paving made from blocks of mesquite wood is to be tried in San Antonio, Texas. Millions of acres of land in southern Texas and northern Mexico are covered with this sort of wood, which has, it is claimed, remarkable lasting quality, Its abundance and durability give promise of its furnishing an extremely cheap paving material. In Berlin, where wood-block paving is used only on the sharpest grades, to give a better footing, and on bridges and their approaches, to lessen the jar, the blocks are made from Swedish pine and the Australian hardwood varieties, as well as native pine and beech and some American cypress and yellow and pitch pine. Experience in Berlin has proved that if the pavement is kept clean and if the materials used in construction have been of the best, under ordinary conditions of traffic and of weather, the surface wears at the rate of about 0.2 inch annually. This sort of pavement lasts, on an average, from ten to fifteen years and costs, approximately, $2.79 per square yard.

An interesting fact has been noted in the city of Birmingham, England, concerning the growing use of gas as compared with electricity. The supply of each of these commodities is municipally owned and managed and there is keen competition between the respective departments; yet the number of gas-consumers and the amount of gas-consumption has steadily increased and is now larger than ever before. The gas rate for lighting is 44 cents per 1000 cubic feet, while the electric-light rate is 6 cents per unit. The increase in the consumption of gas is attributed to the growing use of gas for cooking and heating in households, while its use for lighting and power purposes shows no falling off, but rather a continuing growth.

A plea for business principles in city government is embodied in a pamphlet of sixteen pages entitled *The Problem of Municipal Reform*, by Mr. John B. Holton of Indianapolis. The solution offered for this

problem is a combination of "a qualified candidate," "a simplified ballot," and "a business election."

Since the disclosures made during the past year of the extent to which contracts for prison labor in Chicago have been made the source of graft, the announcement has been made that all contract-labor at the Bridewell has been abolished. All existing contracts are canceled, and all labor available from now on will be used in turning out supplies and materials for the city and for any other local governmental bodies as will buy them. In addition to the stone-crushing plant, the printing shop and the laundry already operated for the city, various new industries will be taken on, as, for instance, the manufacture of brooms, refuse boxes and carts, etc., for use in cleaning the streets, bookbinding for the public library, construction and repair of streets, and the employment of prisoners in the municipal garbage reduction plant.

Topeka, Kan., is the first city west of the Mississippi River to be "surveyed." This task has just been finished by the department of surveys and exhibits of the Russell Sage Foundation, and reports will soon be issued on correctional agencies, municipal administration, health and sanitation, and industrial conditions. A similar survey is now being made in Springfield, Ill.

On the theory that, being a heavy taxpayer, it is intimately concerned in securing public improvements at a minimum cost, the Santa Fé Railroad has announced itself ready and willing to help all cities and towns on the road from its wide experience in matters of buildings, bridge and highway construction. Many townships and small cities are so financially handicapped as to prevent their getting high-priced engineering talent for their ventures, and it is to these municipalities that the railroad offers advice and information from competent engineers and architects.

During the three years since the clean-up campaign was initiated in American cities, the movement has spread all over the country. This year municipalities in thirty states, north, south, east and west, are to conduct sanitary campaigns against dirt and disease. As a prelude to clean-up week in Philadelphia over two thousand street cleaners and their equipment marched in parade. The campaign has been far more successful this year in Philadelphia than ever before, and the

credit for this large measure of attainment is given by the chief of the bureau of highways to the larger amount of advertising.

The governor of Massachusetts has signed an act authorizing the appointment of policewomen in every city and town in the state. The mayor or selectmen may appoint one or more women as special police with all the powers now held by constables except those relating to the service of civil process and those conferred on the police as watchmen; but the intention of the law is merely to confine the duties of the policewomen to safeguarding young girls and women, and to dealing with problems of juvenile crime.

A report relating to the disposition of the sewage of Chicago has been prepared by a committee of sanitary experts employed by the Chicago real estate board. In general it is recommended that the sewage be disposed of by discharging it into the drainage canal after suitable preparation and that the city's water supply be protected by diverting the sewage from Lake Michigan. The report contends that the disposal system could be improved at comparatively slight cost so as to protect drinking water from the lake and, at the same time, dispose of the sewage in such way as not to endanger health. It is recommended, in the main, that a filtration plant be constructed, that such branches of the Chicago River as have no value for navigation be filled, and that refuse from the stockyards and manufacturing plants be specially treated. Haste in carrying out these suggestions and the need for further investigations are likewise urged. It is expected that the cost of the work would be from five to ten million dollars.

In New York the suggestion has been made by the Merchants' Association that municipalities of northern New Jersey join with New York City in a gigantic scheme of sewage filtration in a plant to be built on Sandy Hook. The metropolitan commission, on the other hand, has completed its work and its last report has been issued. Its recommendations include the creation of an island some miles at sea, off Rockaway, to transport the sewage through a tunnel built for the purpose, and to dispose of it there.

The Illinois Rivers and Lakes Commission, which was authorized by a law going into effect last July, has already made accomplishments towards remedying the pollution of water by sewage disposal. This question, of adequate and safe water supply, has become a very serious

one for almost every city in the state of Illinois owing to the rapidly increasing population and to the continuous droughts which have menaced the supply of water during the last few years. The state of water pollution along the Fox and Sangamon Rivers is very bad, for the towns are near together and are growing constantly, and conditions in the towns down the river are much aggravated from those up-river. Complaint has been made especially of sewage disposal from Elgin, Aurora, Batavia, Geneva, and St. Charles, and these towns have been ordered by the commission to file complete plans for the installation of a new system of treating raw sewage before it is emptied into the river. Trade waste from factories, which has been found to be an important factor in pollution, must also be removed as a cause contributing to the danger from unhealthy water. The problem of financing new sewer plants is the most difficult one for the municipalities. In its advisory capacity, the commission, in coöperation with the state water survey, passes on the feasibility of all changes in sewer systems, reduction plants, and all other sewer matters, and in this way is in a position to urge a consideration for possible future growth of the city and the absolute need for some method of sufficient purification of sewage. During the last month or so the towns of Moline, Alton, Freeport, Benton, Peotone, Genoa and Rankins have submitted plans for sewerage systems to be approved by the commission.

Public improvements made during the last five years in Portland, Ore., have cost the city nearly 115 millions of dollars. Of this amount, roughly speaking, 20 millions have been spent on street and sewer improvements; for matters connected with the water system, 5 millions; for bridges, almost 6 millions. The remainder was expended for the construction of buildings and other necessary improvements in the city.

Plans are on foot for the establishment of the first coöperative city in the United States. This will be in Wisconsin, in the Four Lakes' region, near Madison, and will be the result of efforts made by the American Society of Equity. Membership in the city of "Coöperator" will cost ten cents a week and strict coöperation will be the law of the community.

A voluntary committee of twenty-five members to be known as the "Mayor's Taxation Committee," has been appointed by Mayor Mitchel in New York to make a study of the methods of taxation in use in New

York and in other cities both of this country and of Europe. The committee has as members several who are experts on matters of taxation, and of municipal administration, as well as other men prominent in civic and business affairs.

The Sixth National Conference on City Planning was held at Toronto on May 25 to 27 in conjunction with an exhibition on city planning at the University of Toronto.

The fifth annual conference of mayors and other city officials of New York State was held at Auburn on June 3, 4, and 5. Among the speakers were Governor Glynn, Mayor Mitchel of New York City; City Manager H. M. Waite of Dayton, Ohio; State Health Commissioner Hermann Biggs, and Lawson Purdy, president of the department of assessment and taxation in New York City. Special sessions were held on the subjects of fire prevention, city planning, and municipal health matters.

Following the defeat of the so-called Goethals police bill by the New York state legislature in March, the first step in Mayor Mitchel's proposed reorganization of the police department in New York City has been taken in the appointment of a board of police review. Mayor Mitchel has appointed to this board Police Commissioner Arthur H. Woods, Corporation Counsel Polk, the mayor's private secretary, and Police Inspector John Daley. The duties of the board will be to investigate all applications made by dismissed policemen for a new trial and to advise the mayor as to what action he should take in all cases.

A booklet of twenty pages has been issued by the construction news department of the *Engineering News* which contains a list of city officials of the United States revised to January 26, 1914. The mayor, city clerk, and city engineer are given for practically every city in the United States.

The July number of the *National Municipal Review* contains the following articles: "Municipal Zones," by Howard B. Woolston; "Certain Aspects of City Financing and City Planning," by Andrew W. Crawford; "Financing Small Houses," by John Ihlder; "The Segregation of the White and Negro Races in Cities by Legislation," by Gilbert T. Stephenson; "Some Aspects of the Liquor Problem," by John Koren;

"Mayor Hunt's Administration in Cincinnati," by A. Julius Freiberg; "The Graft Investigations of a Year," by Alice M. Holden; and a good many shorter articles and notes.

The contents of the *American City* for the May and June issues include articles as follows: "Water Supplies and the Part they Play in City and County Planning," by Charles W. Leavitt, Jr.; "How to Determine Relative Values in Sanitation," by G. S. Whipple; "Co-partnership Housing in Great Britain," by Henry Vivian; "The Harbor of Hamburg," by E. E. Pratt; "The Relation of the Motor Bus to Urban Development," by F. Van Z. Lane; "Where Suffragists and Anti's Unite," by Edward J. Ward; "Protecting Residential Districts," by Lawrence Veiller;" A Combined Factory, Warehouse and Freight Terminal Plant," by R. E. Ireton; "Children and Town Improvement," by Maud van Buren; "Equitable Hydrant Rentals and Better Methods for Apportioning Fire Protection Cost," by J. W. Alvord; and "The Construction of Modern Bituminous Surfaces and Bituminous Pavements," by A. H. Blanchard.

Two senate documents, authorized for publication by the 63d congress, 2d session, are No. 359, *Effective Voting: An Article on Preferential Voting*, by C. G. Hoag, and No. 360, *Direct Legislation: An Article Relative to Popular Government through the Initiative, Referendum and Recall*, by Frank E. Parson. Other pamphlets relating to municipal affairs which have been issued recently are the following: C. P. Chase, *The City Manager Plan* (Bulletin for March, 1914, of "Iowa Municipal Improvements," issued by the Iowa Engineering Company, 10 cents); *The Organization and Administration of the Health Department of Springfield, Mass.* (report of a survey made by the Springfield Bureau of Municipal Research, April, 1914, 48 pp.); "*Proceedings of the First National Conference on Unemployment, held in New York, February 27-28, 1914* (published in the May number of the *American Labor Legislation Review:* "Unemployment; a Problem of Industry"). The *Review of Reviews* for June, 1914, contains an article by L. D. Upson on "How Dayton's City Manager Plan is Working" (xlix, no. 293, pp. 714–717).

The William H. Baldwin Prize for 1914 has been awarded to Miss Sybel E. Loughead, a senior in Radcliffe College, for her essay on "Is the Commission Form of Government a Permanent One." This prize, of one hundred dollars, is offered annually by the National Municipal

League for the best undergraduate essay on a given topic in municipal government from a college or university offering independent instruction in the subject. Honorable mention was made of the essay submitted by Thomas L. Dyer of Leland Stanford Junior University.

With the adoption of commission government in Nowata, Okla., there is no city of 4000 or over inhabitants in the state which has not that form of government. This change has all come within the last five years; Tulsa being the first, the larger cities following, and the smaller ones changing from the aldermanic to the commission form. Only two have attempted any change from the commission, and the attempt was unsuccessful in those cases. The municipalities seem to be in substantial agreement that, while the cost of commission government is not less than that of any other form, yet conditions are in every way improved because of the centralized responsibility. It is probable that a good many of the smaller villages in Oklahoma will adopt this popular government.

During the last few months the commission form of government has been adopted in the following municipalities: Orange and Irvington, N. J., Bloomington, Ill., Fond du Lac, Wis., Greenwood, Miss., and Palatka, Fla. It was decisively defeated in Kansas City, Mo., and also in Collingswood and Kearney, N. J., and in Platte, S. D.

Several smaller cities and towns have adopted the city-manager plan, Olean, N. Y., Marion and Mulberry, Kan., and Roswell, N. M. The charter of Olean does not contain a provision for the recall owing to the continued opposition of the New York state legislature to that feature, but does include direct-legislation and preferential-voting clauses. A report of the first year's operation of the city-manager plan in Clarinda, Iowa, shows as great success as was hoped for. The city debt has been reduced by $4000, and the municipal water plant has not only lowered its prices but has netted a respectable profit on its operations. An English city, Leeds, has now joined the ranks of cities administered by a city manager, with the avowed purpose of securing better coördination between various municipal departments and of eliminating inefficiency among those departments.

That the city-manager plan has found favor in the state of Kansas is made evident by schemes for its further adoption in the state. Not only will the legislature be asked to pass an enabling act so that the cities of the state may generally adopt that form of government, but it is probable that the state board of administration in charge of all

the state schools will offer next year a course of study for city managers and municipal experts. Prof. F. W. Blackmar of the University of Kansas has been asked to prepare an outline of the proposed course.

A course is announced at the University of Michigan to prepare students for the work of city manager, and it is planned to give the degree of master of arts or science in municipal administration. One year of residence at the University and three months' field work is the minimum requirement, but it is stated that the degree can be attained after this short period only if the candidate has had a good deal of previous training in political science, economics and allied subjects.

Among the recent publications in the field of municipal administration are the following: Brand Whitlock, *Forty Years of It* (New York: D. Appleton, 1914, pp. 374, $1.50); W. H. Dawson, *German Municipal Life and Government* (New York: Longmans, Green, 1914): A. M. Kales, *Unpopular Government in the United States* (Chicago: University of Chicago Press, 1914, pp. 263, $1.50); J. A. Woodburn, *Political Parties and Party Problems in the United States* (New York: G. P. Putnam's Sons, 1914, pp. 487, $2.50); R. G. Gettell, *Problems in Political Evolution* (Boston: Ginn, 1914, pp. 400, $2); W. L. Nida, *City, State and Nation* (New York: Macmillan, 1914); Charles A. and Mary R. Beard, *American Citizenship* (New York: Macmillan, 1914, $1); P. T. Farwell, *Village Improvement* (New York: Stirgis and Walton, 1913, pp. 362, $1); Mary L. Childs, *Actual Government in Illinois* (New York: Century, 1914, pp. 224, $0.50); H. A. Hollister, *The Administration of Education in a Democracy* (New York: Charles Scribner's Sons, 1914, $1.25); Frank Koester, *Modern City Planning and Maintenance* (New York: McBride, Nast, 1914, $6); B. M. Brown, *Health in Home and Town* (New York, D. C. Heath, 1914); R. H. Whitten, *Regulation of Public Service Companies in Great Britain* (Reprint of Appendix G of the Annual Report of the Public Service Commission for the First District, State of New York, 1913. New York, 1914, pp. 231, gratis); L. E. Fischer, *Economics of Interurban Railways* (New York: McGraw-Hill, 1914, pp. 116, $1.50); J. W. Perrin, *History of the Cleveland Sinking Fund of 1862* (Cleveland: Arthur H. Clark Co., 1913, pp. 68, $2.50); J. E. Pennypacker, editor, *Good Roads Year Book* (American Highway Association, 1914, pp. 501, $1); *Official Record of the First American National Fire Prevention Convention*, held at Philadelphia, October 13–18, 1913, compiled by Powell Evans (Philadelphia, 1914, pp. 531, $1); E. N. Bennett, *Problems of Village Life* (London: Williams and Norgate,

1914, pp. 256, 1s.); Cecil Leeson, *The Probation System* (London: P. S. King, 1914, 3s. 6d.); Frederic Keeling, *Child Labour in the United Kingdom* (London: P. S. King, 1914, pp. 326, 7s. 6d.); J. S. Nettlefold, *Practical Town Planning: A Land and Housing Policy* (London: P. S. King, 1914, 2s); B. Seebohm Rowntree and A. C. Pigou, *Lectures on Housing* (London: P. S. King, 1914, 1s. 6d.); *The South American Year Book, 1913* (London: Cassier, 31s. 6d.); E. Schmit, *Organisation des bureaux de placement municipaux et situation des ouvriers agricoles étrangers en Allemagne* (Paris: Rousseau, 1913, pp. 440, 5.50 fr.); M. R. Merlin, *La Crise du logement et les habitations à bon marché* (Paris: Commission d'Action Sociale, 1914); D. V. Grangel, *Estudios de Derecho Administrativo* (Madrid: Hijos de Reus, 1914, pp. 294); S. Weinstein, *Städtische Finanzsorgen, Ursachen und Mittel su ihrer Beseitigung* (Jena: Fischer, 1913, 1 M.); B. Von Schenck, *Beiträge zur Statistik der Stadt Riga und ihrer Verwaltung* (Riga: Jonck u. Poliewsky, 1913, pp. 670, 6.50 M.); E. von Monsterberg, *Hamburg und sein Wirtschaftsleben.* Soziale Studienfahrten, 9. (Hamburg: Volksvereins-Verlag, 1913, pp. 16, 1 M.); Hugo Selter, *Handbuch der deutschen Schulhygiene* (Dresden und Leipzig: Steinkopff, 1914, pp. 759, 28 M.); H. Krüer, *Die Markthallen in ihrer Bedeutung für die Lebensmittelversorgung unserer Grosstädte* (Bonn: Marcus und Weber, 1914, 2.80 M.; F. Musil, *Die Elektrischen Stadtschnellbahnen oder Vereinigten Staaten von Nordamerika* (Wiesbaden: Kreidels Verlag, 1913, pp. 50) R. Goernandt, *Die Boden- und Wohnungspolitik der Stadt Ulm* (Berlin: Heymann, 1914, pp. 66, 2 M.); F. M. von Bieberstein, *Die Sharpflicht für Minderjährige und die Wohnungsfrage* (Jena: Fischer, 1914, pp. 130, 2.50 M.); Albert Werkner, *Der Kleinwohnungsbau in Budapest* (Weide i. Thür.: Thomas u. Hubert, 1913, pp. 137); G. W. Schiele, *Ueber innerer Kolonisation und städtische Wohnungsfrage* (Berlin: R. van der Borght, 1913, pp. 200); H. Lindemann, R. Schwander, and A. Südekum, editors, *Kommunales Jahrbuch.* Sechster Jahrgang, 1913–14. (Jena: Fischer, 1914, 23 M.).

NEWS AND NOTES

Personal and Bibliographical[1]

EDITED BY JOHN M. MATHEWS

University of Illinois

Hon. F. N. Judson of St. Louis has been appointed chairman, and Prof. J. Q. Dealey of Brown University and Mr. Herbert Croly have been appointed members of the delegation from the American Political Science Association to serve on the joint committee on academic freedom. The appointees from the American Economic Association are Prof. E. R. A. Seligman, Chairman, F. A. Fetter, and R. T. Ely; from the American Sociological Society, U. G. Weatherly, chairman, Roscoe Pound, and J. P. Lichtenberger.

Associate Professor W. J. Shepard, of the University of Missouri, has been promoted to the position of professor of political science in that institution.

Prof. J. W. Garner, of the University of Illinois, is spending the summer in France, engaged in the preparation of a work upon the government of that country.

Prof. P. Orman Ray of the Pennsylvania State College has been appointed Northam professor of history and political science in Trinity College, Connecticut, to succeed Prof. Raymond G. Gettell who has recently been appointed professor of government at the University of Texas.

Prof. E. A. Grosvenor has resigned from the chair of modern government and international law at Amherst College, and will devote himself to literary work.

[1] In the preparation of book notes, assistance has been received from Prof. J. W. Garner and others.

Mr. D. W. Hardy, Jr., who has been an assistant in the school of government of the University of Texas, has been appointed assistant in the department of political science of the University of Missouri for the session of 1914–15.

Governor Major of Missouri has recently appointed a commission of fifteen lawyers and judges for the purpose of making recommendations to the next General Assembly for the revision of the codes of civil and criminal procedure.

Dr. Thomas W. Page, of the University of Virginia, is chairman of the recently created state tax commission of Virginia.

Mr. Robert A. Campbell, formerly secretary of the Wisconsin state board of public affairs, has become librarian of the municipal reference branch of the New York public library.

Dr. S. C. McLeod, of Harvard University, has been appointed instructor in political science at New York University.

Dr. Dexter Perkins, also of Harvard University, has been appointed instructor at the University of Cincinnati.

A small body of University men has been selected by the international conciliation board to travel through South America this summer with two purposes in view: first, to understand more adequately the possibilities and problems of education and the educational system in South America with the idea of ascertaining what basis there may be for exchanged relationship between the institutions of the two continents. Secondly, they propose to ascertain more definitely what things, relative to South America, could be effectively taught by the schools of this country. It is the plan of the board that this group of men may be able to recommend some definite form of relationship between the educational institutions of South America and those of our own country. One of the things that is definitely sought is the exchange of students and professors between these two continents. The purpose of the whole movement is to advance the interest of international peace and amity between the two continents.

Prof. Chester Lloyd Jones, of the University of Wisconsin, is a member of the party traveling in South America this summer in the interests of closer relations between the two continents.

Mr. W. L. Carpenter has been appointed instructor in political science at the University of Wisconsin.

Prof. F. A. Ogg, of the University of Wisconsin, is giving courses on American politics and party machinery in the summer school of Indiana University.

Prof. K. F. Geiser of Oberlin College is giving a course on municipal administration in the summer school of the University of Minnesota.

Dr. L. S. Rowe, professor of political science, University of Pennsylvania, will spend the first term of the college year 1914–15 in an extended tour through South America, completing a study of the development of political institutions in the Argentine Republic. Professor Rowe will resume his work at the University of Pennsylvania on the first of February, 1915.

Prof. J. A. Woodburn of Indiana University is giving courses in political history and party problems in the summer school of Cornell University.

Prof. T. F. Moran, of Purdue University, is giving a course on English government in the summer school of the University of Illinois.

Profs. C. A. Beard and H. L. McBain of Columbia University have been appointed chairman and a member, respectively, of a committee created to promote the development and extension of the courses in that institution looking to training for public service.

Prof. Edward Elliott will resume his work as professor of international law in Princeton University this fall. Professor Elliott has been on leave of absence for the past two years. Prof. Philip M. Brown, formerly minister to Honduras, who was in charge of the courses in international law and diplomacy during Professor Elliott's absence, has been appointed assistant professor of international law and politics at Princeton.

A new illustrated edition of Prof. J. W. Garner's *Government in the United States* has recently been brought out by the American Book Company.

Prof. J. M. Callahan, of West Virginia University, has in preparation a volume on *A Century of American-Canadian Relations.*

Prof. A. S. Hershey, of Indiana University, will return this fall to his work in that University after an extended tour in the Orient.

Mr. William A. Sutherland, of the department of political science at the University of Virginia, has begun an extended study of the United States Supreme Court. The first chapter is printed in the May-June number of the *American Law Review*, under the title, "Politics and the Supreme Court."

Mr. John S. Graves has been appointed an assistant in the department of political science at the University of Virginia.

Prof. Burt E. Howard, of the department of political science of Leland Stanford University, died last spring. He was 52 years old, and the author of "Das amerikanische Bürgerrecht" (Leipzig, 1904), and "The German Empire" (New York, 1906).

Prof. N. Dwight Harris, of Northwestern University, is traveling in Russia and the Balkans this summer, gathering material on Near East problems.

Mr. Albert R. Ellingwood, a graduate student in the University of Pennsylvania, has been appointed instructor in the department of political science of Colorado College.

Prof. F. W. Coker, of Ohio State University, has been elected secretary-treasurer of the Ohio Municipal League.

At the recent annual meeting of the American Society of International Law in Washington, Prof. Philip Marshall Brown, of Princeton University, was appointed chairman of a committee to consider ways and means for securing proper instruction in international law in institutions where no courses in that subject are given, or where there are inadequate facilities for such instruction.

Messrs. B. A. Arneson and S. A. Park have been appointed to assistantships in the department of political science of the University of Wisconsin.

Dr. R. T. Zillmer has resigned from the University of Wisconsin to go into the practice of law in Milwaukee.

Dr. U. G. Dubach has been appointed professor of political science in the Oregon Agricultural College, Corvallis, Oregon.

Governor Tener, of Pennsylvania, has appointed to membership on the economy and efficiency commission of that State, for which $10,000 was appropriated, the following persons: H. S. McDevitt, Statistician of the Pennsylvania state board of public charities; Jacob Soffel, and H. D. Jones, corporation clerk in the state treasury department.

The annual conference of state governors, which was scheduled to meet in June at Madison, Wisconsin, has been postponed until after the November elections. The program, as heretofore announced, will be followed at the November meeting with but slight change.

A bureau of reference in government has been organized in connection with the department of political science at the University of Michigan. Miss Gertrude E. Woodard has been appointed secretary of the bureau.

In response to a number of demands for men with special training in municipal administration, the department of political science at the University of Michigan will offer, beginning next fall, graduate work leading to the degree of Master of Arts in municipal administration. The work will not only include advanced courses in the field of municipal administration proper, but also work in public and municipal accounting, public investments, and certain descriptive courses in engineering, including public health, water supply, disposal of city waste, paving, and lighting, together with work in city planning.

It is reported that an agreement has been entered into by the leaders of the United States House of Representatives to have the votes of the House recorded by an electrical apparatus beginning with the opening of the next session. The device, which will probably cost $20,000 to install, is intended to simplify and shorten the roll call.

Among international conferences recently, or soon to be, held are: The Third International Opium Conference at the Hague, May; the International Socialist Congress at Vienna, August; the Nineteenth International Congress of Americanists at Washington, October; the Twenty-first Universal Peace Congress at Vienna, September; the International Congress on Social Insurance, Washington, September-October; and the Second International Congress on the Administrative Sciences at Madrid in May, 1915.

A bulletin describing the system of public health administration in the state of Connecticut has been issued by the school of politics of the Progressive Club of Greenwich, Conn.

A people's legislative bureau has been established in New Jersey to promote coöperation in securing intelligent legislation and to disseminate information among the people as to the methods of state legislation. The headquarters of the bureau are at 655 Broad Street, Newark, N. J. A similar function is performed by the Voters Legislative Association for the people of New York State. The association issues an annual report and a monthly bulletin of *Legislative News*. The secretary is C. V. Howard, 80 N. Pearl Street, Albany, N. Y.

The *Proceedings of the National Tax Association* for 1913, recently published, is a useful volume for students of problems of taxation. It contains valuable papers upon the methods of taxing various forms of wealth, upon the tax situation in different states, and also a general summary and review of tax legislation and constitutional amendments enacted or pending during 1913. The secretary of the association is Thomas S. Adams, state tax commissioner, Madison, Wisconsin. The next meeting of the association is to be held in Denver during September. Among the topics to be discussed are: "Taxation of Mines and Irrigated Lands," "The Single Tax in Canada," "Taxation of Securities," "Work and Possibilities of Public Efficiency Bureaus," and "The Federal Income Tax."

The commission on prison reform in New York State, of which Dr. E. Stagg Whitin is secretary, has made a preliminary report. It recommends, among other things, the abolition of Sing Sing and of the prison for women at Auburn.

The department of political science in Brown University is seeking to have established in Providence a municipal reference bureau, and a municipal library. The plan involves coöperation with the city government, the chamber of commerce, and the state, city and law libraries located in Providence.

A conference was recently held at Indiana University to consider the desirability of holding a state constitutional convention in 1915. Addresses were delivered by Prof. Jesse Macy, of Iowa College, H. S. Bigelow, and J. A. Lapp. A series of conferences is being held in Chicago by a number of persons, including members of the departments of political science of the Universities of Chicago, Illinois and Northwestern to formulate plans in the event of the calling of a constitutional convention in Illinois at an early date. Preparations for constitutional changes are also going on in a number of other states, including New York and North Carolina. In the latter state, the commission which was last year appointed to draft proposed amendments to the Constitution has submitted fourteen such proposals.

In the February number of this REVIEW (page 63), an account was given of the various state economy and efficiency commissions which are now at work. Some of the results of the labors of these commissions are already apparent through the published reports made by them. The Illinois commission, of whose work Prof. J. A. Fairlie is director, has published a brief summary of its findings and recommendations. It finds much inefficiency and waste to be due to the present lack of effective executive and administrative organization, and recommends "that the hundred executive departments be reorganized into not more than twelve departments, under department heads appointed by the Governor, and responsible to him for the proper conduct of their respective departments."

The Minnesota Commission of which Dr. E. Dana Durand is the consulting statistician, has also made a preliminary report, outlining a plan for reorganizing the executive branch of the state government. The plan provides for the grouping of the numerous independent departments, boards and commissions into six great departments: finance, public domain, public welfare, education, labor and commerce, and agriculture. Each of the six departments, except that of finance, is to be under a director, appointed by the governor. The commission also proposes that all employees shall be under civil service and that the budget system of appropriations be followed.

The New Jersey commission has made two reports, the second of which, recently published, considers the reorganization of the state board of health, and the grouping of the administrative services of the State into various departments. The Massachusetts commission has made a report on the "reorganization of boards and commissions having supervision and control of state institutions," and the New York commissioner of efficiency and economy is engaged in an important investigation of the state hospitals for the insane.

The winners of the Harris Political Science prizes for 1914, and the titles of their essays, are announced as follows:

First prize ($250): Willits Pollock, Wisconsin Senior, "Municipal Home Rule and the Wisconsin Commissions."

Second prize ($150): Ivan C. Hansen, University of Minnesota Senior, "Relation of the State to the Municipality."

Third prize ($100): C. P. Currier, Beloit College Senior, "Judicial Review of Administrative Decisions."

The subjects for next year are:

1. "The Reorganization of State Government in the Interest of Economy and Efficiency."
2. "The City Manager Plan of City Government."
3. "Should the Monroe Doctrine be Modified or Abandoned?"
4. "Public Regulation of Wages."

Prizes in the same amount will be offered for the year 1914–15 for the best essays upon the above subjects. The competition will, as heretofore, be confined to undergraduates of the universities and colleges in the following States: Indiana, Illinois, Michigan, Minnesota, Wisconsin, and Iowa. The essays must not exceed 10,000 words, must be typewritten on paper 8½ by 11 inches in size, and mailed on or before May 1, 1915, to Prof. N. D. Harris, 1134 Forest Avenue, Evanston, Illinois, marked "for the Harris Political Science Prize." Contestants are required to mark each paper with a nom-de-plume, and to enclose in a separate envelope their full name and address, class and college. The donor reserves the right not to award any or all of the prizes offered, whenever the committee shall decide that the essays submitted are not of a quality to deserve the reward. And the donor also reserves the right of publishing the best of the essays in such of the popular magazines, or newspapers, as shall ensure a widespread public notice of the work done. For any additional information concerning the scope or the conditions of the contest, inquiries should

be addressed, with stamped envelope for reply, to Prof. N. D. Harris, Northwestern University, Evanston, Ill.

At the twentieth annual Lake Mohonk conference on international arbitration, held in May, Mr. Andrew D. White, who was president of the American delegation at the first Hague conference, outlined the following as the subjects which should come before the third Hague conference: limitation of armament, a permanent arbitration tribunal, and an international prize court, the immunity of personal property not contraband from seizure at sea, the use of torpedoes in blockading hostile ports and coasts, and proper limitations in the use of flying machines for war purposes.

The conference adopted a platform, which recognized, in the localization of the Balkan wars, and in the course of the Mexican situation, unmistakable signs of the advance of the public opinion of the world towards a peaceful settlement of international disputes.

The general peace of Europe, says the platform, has been preserved, despite the menace by the grave situation in the Balkans, while, in the face of threatened war, the American people have shown a praiseworthy self-restraint, and have accepted with commendable spirit the tender of good offices made, in accordance with the recommendations of the first Hague conference, by our sister republics of South America, Brazil, Argentina, and Chili.

"We recognize the far-reaching importance of the proffer and acceptance of mediation," the platform continues, "and record our confidence that the work of the conference of mediators now in session will result in an honorable and permanent settlement of the points at issue between the United States and Mexico. We express unqualified endorsement of President Wilson's declaration that this country does not aim at territorial aggrandizement.

"We call renewed attention to the necessity of such legislation as shall place all matters involving our relations to aliens and to foreign nations under the direct and effectual control of the federal government and the jurisdiction of the federal courts."

The platform urged the federal government to advocate the early convocation of the third Hague conference, and recommended that there be established as soon as practicable among such powers as may agree thereto a court with a determinate personnel and as advised by the second Hague conference.

The conference also adopted a resolution suggesting that the cause

of peace would be aided by the convening of a congress of editors in Washington for the discussion of international arbitration and for the awakening of the public conscience to the advantages of a peaceful settlement of differences arising between nations.

At the call of Mayor Jno. Purroy Mitchel, of New York, and under the auspices of the committee on practical training for public service of the American Political Science Association, the first national conference on universities and public service was held in May at the city hall, New York. Representatives of various universities and civic bodies were present. The topics discussed were: "Upbuilding of Governmental Administration—the Greatest Need of American Democracy," "Public Service as a Career," "The Municipal University," "Public Service Activities of Universities—A Record of What is Being Done," "Practical Training for Public Service," "The National University," and "Should Universities Give Credit for Work in Governmental Bureaus and Other Agencies as Outlined by the Committee on Practical Training for Public Service?" Dr. Charles McCarthy is chairman of the committee, and E. A. Fitzpatrick, of the University of Wisconsin, executive secretary.

Among books of political interest announced for early publication are: *Party Government in the United States*, by Prof. W. M. Sloane (Harpers); *Foreigners in Turkey: Their Juridical Status*, by Prof. Philip M. Brown (Princeton University Press); *The Establishment of State Government in California*, by Cardinal Goodwin (Macmillan); *Municipal Citizenship*, by Hon. George McAneny (Yale University Press); *European Police Systems*, by R. B. Fosdick (Century Co.); *Recent American Diplomacy*, by W. Morgan Shuster (Century Co.); and *Property and Contract in Their Relations to the Distribution of Wealth*, by R. T. Ely (Macmillan).

Some Roads towards Peace, by Charles W. Eliot (Washington, 1914, pp. 88) is a report made by President Eliot to the Trustees of the Carnegie Endowment for International Peace on observations made in China and Japan in 1912 and now published by the Endowment as Publication No. 1 of the Division of Intercourse and Education. The volume is a part of a plan on the part of the Endowment to disseminate information regarding the results of international visits by representative men.

Three volumes of the *National Social Science Series*, edited by Prof. Frank L. McVey, president of the University of North Dakota, and published by A. C. McClurg and Company, have thus far appeared. They are *Money*, by W. A. Scott, *Taxation*, by C. B. Fillebrown, and *The Family and Society*, by J. M. Gillette. Among other volumes in the series announced to appear soon are: *The State and Government*, by J. S. Young, *The City*, by H. C. Wright, and *Banks and Banking*, by W. A. Scott.

A list of Illinois territorial and state laws from 1788 to 1913, and also of the various revisions and compilations is contained in a volume entitled *Travel and Description*, by S. J. Buck, published by the Illinois State Historical Society (1914, pp. 514).

A *Digest of Pension Legislation for Public Employees of all the States in the United States* is printed as an appendix to the report of the Massachusetts commission on pensions (Boston, 1914, 345 pp).

The report of the joint commission of the American Federation of Labor and the National Civic Federation upon the operation of state workmen's compensation laws has been issued as a senate document (Doc. no. 419, 63rd Cong., 2d sess. 1914, 255 pp). It consists of the commission's findings, views of employers and workmen, digest of laws, and rules of state boards of award.

The Laws of the Various States Relating to Minimum Wage for Women and Minors has been compiled by the legislative reference department of the Michigan State Library (Bulletin No. 5, Lansing, 1913, pp. 37).

The workings of the child labor law in Massachusetts is the subject of a report recently made by a committee in that state to the state board of labor and industries (Boston, 1914, 94 pp.).

Bulletin no. 2 of the Indiana Bureau of legislative information contains a review of legislation in Indiana relating to *Drainage and the Reclamation of Swamps and Overflowed Lands*, by Chas. Kettleborough (Indianapolis, 1914, 68 pp.).

Bulletin no. 1 of the Ohio legislative reference department is entitled *Compulsory Voting and Absent Voting, with Bibliographies*, by W. T. Donaldson (Columbus, 1914, 35 pp.).

A general review of tax legislation in the various states is contained in the twenty-third annual report of the New York Tax Reform Association for 1913 (29 Broadway, New York).

Special state tax commissions in Maryland and Kentucky have recently made reports (*Report of the Commission for the Revision of the Taxation System of the State of Maryland and the City of Baltimore*, Baltimore, 1913, pp. 445; *the Report of the Special Tax Commission of Kentucky*, 1912–14, Frankfort, 1914, pp. 350). The Kentucky report reprints the laws of the various states regarding the taxation of securities and state tax commissions.

The report of the committee of the Commonwealth Club of California, appointed to consider the question of the proper method of selecting state judges is contained in the *Transactions* of the club for June. The committee recommended that the state constitution "be so amended that the people shall select their judges through appointment by some official elected by them; that when so selected they serve during good behavior, remaining subject to removal under the present provisions; that is, by legislative action, impeachment, or the recall." A minority report is also presented, containing arguments in favor of selecting judges by popular vote. An appendix contains a table showing the methods of selecting judges followed in the various States.

The Library of Congress has recently brought out the second part of the *List of References on Federal Control of Commerce and Corporations*. It is devoted to special phases of the question.

The University of Minnesota has begun a series of publications on current problems, the first of which, by William Anderson, is entitled "The work of public service commissions with special reference to the New York commission." A bibliography is appended.

At the meeting of the Special Libraries Association held in Washington last May, a paper on "The Special Library and Public Efficiency" was read by Edward A. Fitzpatrick, executive secretary of the committee on practical training for public service of the American Political Science Association. It is published in *Special Libraries* for June.

The first number of the new *Mississippi Valley Historical Review* made its appearance in June. Among articles of interest to political

scientists are those on the "United States and Mexico, 1835–37," by E. C. Barker, and "Louisiana as a Factor in American Diplomacy, 1795–1800," by J. A. James. The managing editor of the *Review* is Prof. C. W. Alvord, of the University of Illinois. Prof. B. F. Shambough, of the University of Iowa, is a member of the board of editors.

Dr. C. G. Fenwick, of the Carnegie Endowment for International Peace is engaged in the translation of two volumes of the series, *Das Werk vom Haag*, edited by W. Schücking, of the University of Marburg. The first volume is by the editor and is entitled, *Der Staatenverband der Haager Konferenzen.* The second volume, by Hans Wehberg, is entitled, *Das Problem eines internationalen Staatengerechthofes.* When completed, the translations are to be published by the Carnegie Endowment. It is understood that an English translation of these volumes will also be brought out during the course of the present year by the Clarendon Press at Oxford.

The *Annals of the American Academy of Political and Social Science* for May is devoted to the subject of "State Regulation of Public Utilities." The subject is treated under the following heads: "Legislation as to State Public Utility Commissions," "State Regulation and Municipal Activities," "Uniform Accounting and Franchises," "Public Control over Securities," "Valuation of Public Utilities," "Electric and Water Rates," and "Standards for Service."

The "Official Good Roads Year Book" for 1914, issued by the American Highways Association (Washington, D. C., 1914, 501 pp.), contains digests of State legislation on "State Aid to Roads," "Local Bond Issues," "Convict Labor," and "Automobile Registration."

A careful investigation of state boards of administration and of methods of control of state institutions in all the important states of the union has been undertaken by the Rhode Island State Library.

The "Essays in Legal History," read before the International Congress of Historical studies held last year in London have been published by the Oxford University Press, under the editorship of Prof. Paul Vinogradoff. The essays are printed in the languages in which they were originally written. Among those who contributed papers to the collection are Sir Frederick Pollock, and Professors Esmein and W. S. Holdsworth.

A History of the General Property Tax in Illinois, by R. M. Haig, instructor in economics at Columbia University, is published as the March–June number of the University of Illinois Studies in the Social Sciences (Urbana, Ill., 1914, 235 pp.).

The Houghton Mifflin Company will bring out this fall a work entitled *World Diplomacy. Volume I, Intervention and Colonization in Africa*, by Prof. N. Dwight Harris, of Northwestern University. A second volume on *Asia: The Near and Far East,"* is expected to follow.

The Winning of the Far West, by Robert McNutt McElroy, Ph.D., head of the Department of History and Politics in Princeton University, is the title of a volume which the Putnams have in train for publication in the fall. This volume is designed as a continuation of Colonel Roosevelt's well-known series *The Winning of the West.* Professor McElroy includes in the volume a history of the Texas revolution, the Mexican war, the Oregon question, and the extension of American dominion to the Pacific coast.

The first volume of the long expected *Cyclopedia of American Government*, edited by Prof. A. B. Hart, of Harvard and Prof. A. C. McLaughlin, of Chicago, has at last appeared from the press of D. Appleton and Company. The other two volumes are expected to appear during the summer.

Prof. J. P. Hall's *Constitutional Law*, which was originally issued in 1910 by the La Salle Extension University as one of a series of volumes on American Law and Procedure has now appeared under the same auspices as a separate volume.

A new and revised edition of Professor Morey's *Outlines of Roman Law* has appeared from the press of G. P. Putnam's Sons (New York, 1904, pp. 437). The text of this well known manual has not been appreciably augmented, but has been revised in the light of recent literature relating to the subject.

A low priced (fifty cents) edition of Walter Lippman's *A Preface to Politics* has appeared from the press of Mitchell Kennerley.

Sir W. M. Ramsay's Romanes lecture entitled *The Imperial Peace: An Ideal in European History* (Oxford: the Clarendon Press, 1913, pp. 28) is devoted to an analysis of Dante's imperial idea, and a comparison of it with the modern conception of Empire. It is interesting to note that the unity of England and Scotland is declared to be in very large measure a result of the influence exerted by the writings of Sir Walter Scott.

A new volume in the *Modern Criminal Science Series* now being published by Little, Brown and Co. under the auspices of the American Institute of Criminal Law and Criminology is Baron Raffaele Garofalo's well known treatise on "Criminology." The translation was made by Mr. Robert W. Millar of the Northwestern University law school, from a French edition of the work prepared by the author in 1905. The work was originally written and published in Italian in 1885 and it has gone through not less than five editions and has been translated into various languages. Garofalo's doctrines differ markedly from those of Ferri and Lombroso in many respects but he agrees with both in the emphasis which he places on the value of the experimental and inductive methods. He is a thorough-going advocate of the individualization of punishment, that is, the adaptation of the punishment to the needs of the individual offender, though he does not ignore the practical difficulties in the way of carrying out such a policy. The character of Baron Garofalo's treatise is too well known to need an extended review. The translator and the publishers deserve the thanks of all American students of criminology for bringing it out in English and thus making it accessible to those who do not read French or Italian.

The title of the *Zeitschrift für Völkerrecht und Bundesstaatsrecht* has been changed to the *Zeitschrift für Völkerrecht* (Kern's Verlag, Breslau) and will henceforth be devoted mainly to international law. Volume VII is a book of 641 pages not including two "Beiheften" of nearly 200 pages. Part I contains some two dozen articles on various questions of international law by various European authorities, among the best known of whom are Professors Josef Kohler of Berlin, Lammasch of Vienna, Ottfried Nippold, Erich of Helsingfors, Huber of Zurich, Schückung of Marburg, von Bar of Göttingen and Schoenborn of Heidelberg. Part II is devoted to judicial decisions including the texts

of the awards of the Hague Tribunal in the cases of the *Carthage* and the *Manouba*. Part III contains the texts of various important national legislative acts and treatises; part IV contains a number of miscellaneous papers, among others a sketch of the life and services of the late Professor Westlake by Professor Oppenheim of Cambridge; part V contains various "Chroniks" of important happenings during the year 1913 and part VI is devoted to reviews of new books on international law. The volume as a whole comes up fully to the high standard set by the editors in the beginning and it easily ranks as one of the most valuable publications that we have in the field of international law.

DECISIONS OF STATE COURTS ON POINTS OF PUBLIC LAW

Interstate comity. Newport v. Merkel, Kentucky, Dec. 19, 1913. 161 S.W. 549. An act may validly exempt non-resident owners of motor vehicles from registration and the payment of a license fee, if they have complied with a similar law of the state of their residence. Such a statute supersedes an ordinance subjecting non-residents to the requirement.

Operation of constitutional provisions. State v. Brodigan, Nevada, Feb. 28, 1914. 138 Pac. 914. The article of the constitution of Nevada providing for referendum and initiative declares that it shall be self-executing. It fails however to impose upon the Secretary of State any duties regarding the filing of referendum petitions for submission of a law to the voters of a county.

Held that provision for such filing should be made by statute and that in the absence of a statutory provision the Secretary of State will not be required by mandamus to file the same.

Legislative Power, Delegation; statewide referendum. Hudspeth v. Swayze, New Jersey, Jan. 23, 1914. 89 Atl. 780. The provision of the so-called chancellor-sheriff jury act, by which its operation is made to depend upon a favorable vote of the people, does not constitute a delegation of legislative power to be exercised directly by the people. It is a perfect piece of legislation, the effect of which is conditioned upon the happening of the contingency.

Since the popular vote was affirmative, it is not necessary to consider, whether the power to reject would have constituted an unconstitutional delegation of the power to repeal.

While the trend of authority is against the validity of such delegation, the affirmative view is supported by such eminent authority, that the legislature had the right to form its own judgment.

Legislative Power, Delegation: local option. Ex parte Francis, Texas, Jan. and Feb. 1914. 165 S. W. 147. A local option provision in a statute making its operation in any county dependent upon the result of an election therein, does not violate the provisions of the constitution, restricting the power to suspend laws to the legislature, and forbidding the exercise of such power by any other body.

Very full discussion and long dissenting opinion.

Delegation of Power. Abbott v. State. Supreme Court of Mississippi. Dec. 22, 1913. 63 So. 667. An act giving a state live stock sanitary board "plenary power to deal with all contagious and infectious diseases of animals as in the opinion of the board may be prevented, controlled and eradicated," is not invalid as a delegation of legislative power.

Departments of Government. Constitutional Powers of Corporation Commission. State v. Tucson Gas, etc., Co. Supreme Court of Arizona, Feb. 18, 1914. 138 Pac. 781. Under the constitution the corporation commission has full power to fix classifications, rates and charger of public service corporations and the legislature has therefore no powes to require such corporations to sell their products by meter measurement.

Judicial Power. State v. Summers, South Dakota, Dec. 30, 1913. 144 N.W. 730. An act providing for referendum on municipal ordinances upheld.

"In our judgment: the time has come when courts should decline the task of attempting by construction to add to defective legislation, or to eliminate or limit provisions which work public or private injury. They should interpret the law as it is written, and not otherwise."

Due Process—right of appeal. Cullins v. Williams, Kentucky, Nov. 21, 1913. 160 S.W. 733. An act permitting the commitment of dependent children fails to provide for a right of appeal. This does not invalidate the statute since the right of appeal is purely a matter of legislative discretion. However in proper cases parties aggrieved may resort to the writ of habeas corpus or of prohibition.

Due Process—summary proceedings against defaulting tax collectors. Gaulden v. Wright, Georgia, Nov. 14, 1913. 79 S.E. 1125. Civil Code, Sec. 1187, allows the Comptroller General to issue execution against a tax collector who fails to settle his accounts with him, without providing for notice and hearing. Held unconstitutional.

A similar proceeding had been sustained by the U. S. Supreme Court in Murray's Lessee v. Hoboken Land and Improvement Co. 18 How. 272.

Due Process—statutory presumptions in criminal cases. State v. Russell, North Carolina, Nov. 10, 1913. 80 S.E. 66. A statute makes it an offense to have in possession a certain amount of liquor for purpose of sale and declares that possession of the amount shall be prima facie evidence that it is kept for sale. Held that this does not destroy the presumption of innocence; the jury must, in order to convict, be convinced of the guilt of the accused beyond a reasonable doubt.

Equality—classification. Ex parte Lewinsky. Florida, Nov. 11, 1913. 63 So. 577. A statute regulating the sale of intoxicating liquors may validly exempt hotels having 100 rooms or more. The court suggests that in very large hotels the bar is a mere incident, and the hotel management will, as a matter of self protection, see to it that it is properly conducted.

Equal rights: monopoly: union labor clause in public contracts. Wright v. Hoctor, Nebraska, Feb. 13, 1914. 145 N.W. 704. A union labor clause in a contract for public work invalidates the contract, and its performance will be restrained by injunction.

Church and State; use of school house for religious meetings. State v. Dilley. Nebraska, March 13, 1914. 145 N.W. 999. A school district board will not be compelled by mandamus to close the school house to occasional use for religious meetings not interfering with the school work.

Police power—Minimum wage legislation. Stettler v. O'Hara, Oregon, March 17, 1914. 139 Pac. 743. The minimum wage act is a constitutional exercise of the police power; it does not delegate legislative power. In view of the provisions for hearing, it is not unconstitutional to make the commission's findings of fact conclusive.

Police Power—Gift enterprises. State v. Sperry & Hutchinson Co. 94 Neb. 785; Dec. 24, 1913. An act prohibiting the business of giving and redeeming trading stamps is an unreasonable interference with lawful business, and invalid under the State Bill of Rights and the Fourteenth Amendment.

Police Power—Construction of Statute. People v. Guiton. New York Dec. 16, 1913. 210 N. Y. 1. The oleomargarine law of New York forbids imitation of butter either by the selection of artificial coloring matter not being an essential ingredient, for the sole purpose of producing the imitated color, or the selection of ingredients with the predetermination and purpose of producing the imitated color; but it does not prohibit a semblance to butter not resulting from imitation, but from a selection of ingredients dissociated from the intention to imitate. Manufacturers need not choose ingredients deliberately so as to avoid the shade of color which is that of butter.

Taxation and court fees. Malin v. La Moure County, North Dakota, Feb. 14, 1914. 145 N. W. 582. Probate fee graduated according to the size of estate should be judged as taxes; as taxes they are invalid because they are in addition to the uniform tax to which all property in the state is subject. They are not inheritance taxes because not limited to the net value of the estate.

LIST OF DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

The following list is a continuation of the series of doctoral dissertations published annually in the *Review*. For the year 1913 a list similar to that given below appeared in the November, 1913, number (vol. vii, p. 689). A date where given after the title of the dissertation indicates the probable date of completion.

COLONIES

E. R. Russell, Ph.B., Vermont, 1906. Action of the Privy Council on Colonial Legislation. *Columbia.*

O. G. Jones, B.A. Ohio State University, 1908. A study of Self-Government in the Philippines. *Wisconsin.*

G. W. Washburne, A.B. Ohio State, 1907; A.M. Columbia, 1913. Imperial Control over the Administration of Justice in the American Colonies. *Columbia.*

P. S. Flippin, A.B. Richmond, 1906. Royal Government in Virginia. *Johns Hopkins.*

J. S. Custer, A.B. William Jewell, 1907; B.A. (Oxon), 1910. The Canadian Constitutional Act of 1791. *Wisconsin.*

CONSTITUTIONAL LAW

A. E. R. Boak, A.M., Queens University; A.M. Harvard University. The Roman Magistri: A Study in Constitutional History. 1914. *Harvard.*

M. S. Hirsch, A.B., College of the City of New York, 1911; A.M. Columbia, 1913. Freedom of Speech and of the Press. *Columbia.*

R. H. Wettach, A.B. Pittsburgh, 1913; A.M. Pittsburgh, 1914. The Property Basis in the Making of the Constitution. *Pittsburgh.*

H. C. Beyle. Constitutional and Administrative Aspects of Tenement House Legislation. *Chicago.*

J. M. Atwood, A.B. Wisconsin, 1910; M.A. 1912. A Study of the Relations of the States to the Central Government in Mexico. *Wisconsin.*

H. E. Heeren, A.B. Shurtleff College, 1911; A.M. University of Illinois, 1912. Judicial Control over Legislation in Australia and Canada. Completed. *Wisconsin.*

F. B. Clark, A.B. Richmond College, 1907; A.M. 1908. The Constitutional Doctrines of Justice Harlan as Stated in his Dissenting Opinions. Completed. *Johns Hopkins.*

W. B. Hunting, A.B. Johns Hopkins, 1909. The Impairment of the Obligation of Contracts. Completed. *Johns Hopkins.*

Lindsay Rogers, A.B. Johns Hopkins, 1912. The Postal Power of Congress. *Johns Hopkins.*

T. Yokoyama, Ph.B. Kansas City University, 1909. The Japanese Judiciary. *Johns Hopkins.*

C. E. Asnis. The Revision of the Pennsylvania State Constitution, with special Reference to Finance and Taxation. *Pennsylvania.*

F. W. Breimeier, A.B. Bucknell, 1910; A.M. University of Pennsylvania, 1914. The Struggle for Home Rule in Pennsylvania, 1916. *Pennsylvania.*

J. G. Randall, A.B. Butler, 1904; A.M. Chicago, 1904. Confiscation of Property During the Civil War. 1914. *Chicago.*

W. M. Feigenbaum, A.B. Columbia, 1907; A.M. 1908. Ratification of the Federal Constitution in New York. *Columbia.*

S. D. M. Hudson, Ph.B. Syracuse, 1907. The Power of Congress over Interstate Commerce. *Columbia.*

L. J. Matheson, A.B. Colgate, 1911; A.M. Columbia, 1912. Judicial Control over Legislation in New Jersey. *Columbia.*

C. H. Meyers, A.B. Columbia, 1912. Constitutionality of Workmen's Compensation Acts. *Columbia.*

C. Perle, A.M. Columbia, 1913. Judicial Control over Legislation in New York. *Columbia.*

B. E. Schulz, A.B. De Pauw, 1909; A.M. Columbia, 1911. Justice McLean and the Dred Scott Decision. *Columbia.*

K. K. Steffensen, A.B. University of Utah, 1911; A.M. Columbia, 1912. The Juristic Effect of Declaring a Statute Unconstitutional. *Columbia.*

W. O. Ault, A.B. Baker, 1907; B.A. Oxford, 1910. The Private Court in England. *Yale.*

C. A. Smith, A.B. Kansas, 1908; A.M. Yale, 1909. The English Liberty (Immunity). *Yale.*

Lucia von L. Becker, Ph.B. Chicago, 1909; Ph.M. 1911. The History of the Admission of New States into the Union. *Chicago.*

A. P. James, A.B. Randolph-Macon, 1906; B.A. (Oxon), 1910; A.M. Chicago, 1912. The Constitutional Responsibilities of the Secretary of the Treasury. *Chicago.*

N. E. West, A.B. North Carolina, 1911. The Recall of Judicial Decisions. *Harvard.*

Leita M. Davis, A.B. Michigan, 1911. Proposals to Amend the Articles of Confederation. *Pennsylvania.*

A. G. Warren, A.B. Rochester, 1883; A.M. New York, 1909. A Comparison of the Tendencies in Constitutional Construction shown by the Supreme Court under Chief Justices Marshall and Taney respectively. *New York.*

J. Tanger, Ph.B. Franklin and Marshall, 1909; A.M. Pennsylvania, 1912. Proposed amendments to the Constitution of the United States since 1889. *Pennsylvania.*

R. J. Purcell, A.B. Minnesota, 1910; A.M. 1911. The Connecticut Constitution of 1818. *Yale.*

J. S. Custer, A.B. William Jewell, 1907; B.A. (Oxon) 1910. The Canadian Constitutional Act of 1791. *Wisconsin.*

INTERNATIONAL LAW AND DIPLOMACY

J. P. Chamberlain, LL.B., Hastings Law School, 1898. International Law of Rivers. *Columbia.*

A. Izumi, A.B. Lake Forest, 1907; A.M. Wisconsin. 1908. International Police Power. *Columbia.*

S. F. Bemis, A.B. and A.M., Clark. History and Diplomacy of the Jay Treaty. *Harvard.*

C. R. Hall, A.B. Amherst; A.M. Harvard. The Secretary of State as a Diplomat. *Harvard.*

H. Hurwitz, A.B. and A.M., Harvard. Change of Sovereignty in International Law. *Harvard.*

E. W. Pahlow, Litt B. and Litt. M., Wisconsin; A.M. Harvard, 1901. The Diplomatic Relations between England and Holland, 1668–1672. *Harvard.*

D. Perkins, A.B. Harvard, 1909. The Reception of the Monroe Doctrine in Europe, 1823–1824. 1914. *Harvard.*

R. Hayden, B.A. Knox, 1910; M.A. Michigan, 1911. Treaty Making Power of the United States Senate. 1915. *Michigan.*

Mary W. Williams, A.B. Stanford, 1907; A.M. 1908. Anglo-American Isthmian Diplomacy, 1815–1914. *Stanford.*

J. L. Goebel, Jr., A.B. Illinois, 1912; A.M. 1913. Recognition of De Facto Governments by the United States. *Illinois.*

Q. Wright, A.B. Lombard, 1912; A.M. Illinois, 1913. The Extent to which International Law is incorporated into the Municipal Law of the United States. *Illinois.*

O. L. Owens, A.B. Richmond, 1898. The Protection of American Foreign Missionaries by the United States. *Johns Hopkins.*

O. G. Cartwright, A.B. Yale, 1893; A.M. 1901. History of the American Consular System. 1914. *Columbia.*

F. M. Russell, A.B. Stanford, 1912; A.M. 1913. American Governmental Interest in and Participation in European Affairs. *Stanford.*

H. N. Sherwood, A.B. Indiana, 1909; A.M. Harvard, 1910. The Relations of the United States with Spain, 1780–1795. *Harvard.*

P. Hockstra, A.B. Michigan 1910; A.M. 1911. The Relations between the United States and the Netherlands, 1815–1840. *Pennsylvania.*

B. E. Schmitt, B.A. (Oxon) 1908; Ph.D. Wisconsin, 1910. British Policy and the Enforcement of the Treaty of Berlin. *Wisconsin.*

H. M. Louis, A.B. George Washington 1912; A.M. Pennsylvania, 1913. Development of Spheres of Influence in China. *Pennsylvania.*

JURISPRUDENCE

W. B. Webster, University of Wisconsin. Methods of Land Registration. 1916. *Wisconsin.*

E. E. Witte, A.B. Wisconsin, 1909. The Development of the Law of Labor Combination in the United States. *Wisconsin.*

C. C. Davis, S.B. and LL.B. Harvard. The Nature of Law. *Harvard.*

S. E. Hall, A.B. Vermont, 1907; A.M. Columbia, 1911. The Development in Roman and English Law of an Implied Warranty of Quality in Goods Sold. *Columbia.*

R. R. Powell, A.B. Rochester, 1911. The Development in Roman and in English Law of Remedies against Fraud. *Columbia.*

K. K. Steffensen, A.B. University of Utah, 1911; A.M. Columbia, 1912. The Juristic Effect of a Decision Declaring a Statute Unconstitutional. *Columbia.*

J. E. Miller, A.B. Kansas, 1910; A.M. Illinois, 1913. Benefit of Clergy in England. *Illinois.*

LEGISLATION AND ADMINISTRATION

K. E. Young, A.B. St. Johns, 1909; A.M. Columbia, 1913. The Income Tax. 1915. *Columbia.*

D. C. Sowers, A.B. Baker, 1904. Financial History of New York State. Published. *Columbia.*

J. L. Donaldson, A.B. Maryland Agricultural College, 1910. Present State Administration in Maryland. Completed. *Johns Hopkins.*

M. N. Orfield, B.A. University of Minnesota, 1908; M.A. 1909; LL.B., 1912; Ph.D. 1913. Federal Land Grants to the States. Published. *Minnesota.*

R. V. Harlow, A.B. Yale, 1909; A.M. 1911; Ph.D., 1913. History of Legislative Committees, 1750–1800. *Yale.*

Yetta Scheftel, A.B. Northwestern, 1908; A.M. Chicago, 1909. Theory and Practice of Land Taxation. *Chicago.*

W. G. McLoughlin, A.B., St. Francis Xavier, 1907; A.M. Columbia, 1911. Taxation of Corporations in New Jersey. 1914. *Columbia.*

W. M. McClure, A.B. Tennessee, 1910. Public Finance in Tennessee. 1915. *Columbia.*

J. P. Lenning, A.B. Union, 1908. Legislation and Legislative Methods in Connecticut since 1818. *Yale.*

A. W. Lovell, A.B. Dartmouth, 1903; LL.B. Boston, 1907; LL.M. 1907. The History of the Office of Attorney-General in the United States. *Yale.*

C. B. Austin, A.B. Indiana, 1907; A.M. 1908. Comparative Administration of Labor Legislation. *Wisconsin.*

S. Kitasawa, A.B. Waseda, 1910; A.M. North Carolina, 1911. The History and Growth of National Indebtedness in Japan. 1914. *Johns Hopkins.*

J. G. Herndon, B.S. Washington and Lee, 1911; M.A. 1912. The Wisconsin Income Tax, its Administration and Significance. *Wisconsin.*

U. G. Dubach, A.B. Indiana, 1908; M.A. Harvard, 1910. State Health Administration. Completed. *Wisconsin.*

M. Loomis, Chicago, 1910. The Delegation of Power by the Legislature. 1914. *Wisconsin.*

C. C. Maxey, A.B. Whitman, 1912. River and Harbor Legislation in the United States: A Study of Logrolling. *Wisconsin.*

R. M. Haig, A.B. Ohio Wesleyan, 1908; A.M. Illinois, 1909. A History of Taxation in Illinois. In press. *Columbia.*

F. B. Garver, A.B. Nebraska, 1909. The Subvention in American State Finance. *Chicago.*

Shao-Kwan Chen, A.M. Columbia, 1911. The Chinese Taxation System in the 19th Century. Published. *Columbia.*

H. H. Burbank, A.B. Dartmouth, 1909; A.M. 1910. History of Taxation in Massachusetts. 1915. *Harvard.*

J. F. Ebersole, Ph.B. Chicago, 1907; A.M. Harvard, 1909. History of the National Banking System from 1864–1874. 1914. *Chicago.*

C. R. Nesbit, B.A. Kansas, 1911; M.A. 1912. Guarantee of Bank Deposits in Kansas and Oklahoma. 1915. *Wisconsin.*

L. M. Powell, A.B. Ohio Wesleyan, 1905. Factory Inspection. 1915. *Chicago.*

A. Howes, A.B., Nebraska Wesleyan, 1902; A.M. Nebraska, 1912. The Minimum Wage Legislation for Women in the United States. 1915. *Nebraska.*

A. Fleisher, A.B. Pennsylvania, 1908; A.M. Wisconsin, 1911. The Enforcement of Child Labor Laws. *Columbia.*

P. S. Collier, A.B. Iowa, 1911; A.M. 1912. A Study of Minimum Wage Legislation. 1915. *Columbia.*

H. T. Lewis, B.A. Lawrence, 1910; M.A. Wisconsin, 1911. An analysis of Economic Elements embodied in the Wisconsin Railway Commission. 1914. *Wisconsin.*

H. Kyrk, Ph.B., Chicago, 1910. Control of Public Utilities. 1915. *Chicago.*

L. A. Frye, A.B. Minnesota, 1907; A.M. 1908; B.C.L. Oxford, 1911. History of State Control of Public Service Corporations in New York. 1914. *Columbia.*

E. M. Arnos, S.B. Lima, 1907; A.M. Clark, 1908. The Policy of the States towards the Trusts. 1915. *Chicago.*

D. S. Hanchett, A.B. Wisconsin, 1910. Government Aid and Regulation of Commerce in the United States. 1914. *Pennsylvania.*

A. W. Taylor, A.B. Doane, 1902; A.M. Wisconsin, 1910. The Long and Short Haul Clause. 1914. *Chicago.*

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BOOK REVIEWS

The State. Its History and Development Viewed Sociologically. By FRANZ OPPENHEIMER. Authorized translation by John M. Gittermann. (Indianapolis: The Bobbs–Merrill Company, n. d. Pp. 302.)

Just why this work should receive the honor of a translation into English, when many more important books remain untranslated, is not apparent. In his preface the translator, after giving some account of his author's previous works, suggests that he has acquired a great following in the German universities. That may be so, but a cynic might say that the present work goes far in explaining why Dr. Oppenheimer is still a "*Privat-Dozent*," although his first ambitious work, "*Die Siedlungsgenossenschaft*," appeared nearly eighteen years ago.

The main thesis of the present work is that there are two ways of acquiring the world's goods, to-wit: by economic or by political means, and that hitherto most people have preferred the latter method of becoming rich. The instrument of accomplishing this is the state; and it does so by enabling the stronger to appropriate to themselves the proceeds of other people's labor, principally through the institution of private ownership of land. According to the author, history teaches that the origin of every state is found in the subjection of some peaceable community living contentedly without politics, by some warlike neighbor tribe. The conquerors become the ruling class and continue to amass wealth by politics, while the subject tribe keeps on toiling and turning its products over to its rulers. Obviously there are some states which we know to have started in a different manner, for instance the United States. That, however, cannot hurt the author's theory. In this country also we have the ruling and the subject class; only, the subject class here hurries to take its proper position in the political scheme by immigrating. The author fails to explain why these teeming millions are so anxious to become the American subject class. It reminds one of the fable regarding the spider and the fly. At any rate, all states until this day have been "class states." Progress is in the direction of substituting economic for political action, until the latter has disappeared, and with it

of course the state. The nearest approach to that consummation the author finds in New Zealand.

If the state in every case has been formed by the subjugation of a weaker to a stronger tribe, it follows that there must be a long development of mankind towards civilization, before the state was heard of. For low savages do not subjugate their enemies—they kill them, if they can. In other words, the author narrows the meaning of "state" sufficiently to exclude everything that was done by human societies until the condition arrives which he needs for his thesis, and he is certain that sooner or later these conditions must be met, for history is of course filled with examples of conquest and subjugation. Having thus made a definition (in effect, for he does not trouble to give a formal definition of "state") suitable for his preconceived theory he goes on with his argument by substituting whenever convenient the concept "government" for that of "state." For this fault he should not be judged too harshly, for it is a very common vice of continental writers. This confusion is perhaps accountable also for the notion that human societies are without the state, and do not use political means to promote their ends, until some foreign tribe has succeeded in imposing its own dominion over them. The author recognizes no state, till he can discover some government with a fairly elaborate machinery of officials, soldiers and the like. All this in a work professing to explain the nature of the state is of course a begging of the question.

The ultimate goal of social development, according to Dr. Oppenheimer, is the abolition of the state and the substitution of something the translator calls "freemen's citizenship." The reviewer is not in possession of the original, but perhaps the German is something like "*Freibürgerschaft.*" In this happy condition people will never act according to any but economic methods, and every kind of compulsion, such as we associate with the state, will have disappeared. One of the reasons why there will be no compulsion is that everybody will have all the land he needs to support himself—if some stubborn owner will not give the laborer all he asks, why the laborer will turn his back on him and go upon the land. According to a remarkable calculation on pages 11 to 13, there is no scarcity of land. Even in densely populated Germany there is enough to give each family twenty acres; and one-third of the land surface of the globe would give each family of five in the world eighteen and a half acres! It is rather surprising that the author finds an approximation to his ideal of stateless society in New Zealand, where according to most of the information we get the state is active even in matters it

usually leaves alone, such as compulsory arbitration of labor disputes and the like. Possibly he has in view only the supposed fact that there are no developed class distinctions in the antipodean islands, and consequently there can be no "class state."

The work is not badly translated, as translations go. It might very well serve the purposes of syndicalists or members of the I. W. W. who desire to adopt a "scientific" foundation for their ideas. For it is not a whit more fanciful or wrongheaded than other writings of the anarchist school.

ERNEST BRUNCKEN.

Le socialisme municipal en Angleterre. Par RAYMOND BOVERAT. (Paris: Rousseau, 2d edition, 1912. Pp. xvi, 647.)

The first edition of M. Boverat's monograph on English municipal socialism appeared in 1908. Since that date the public ownership movement has been making headway in France, and the author has deemed it a patriotic duty to bring his book once more to the attention of his countrymen in order, as he tells us, that they may learn prudence from the administrative follies of their neighbors across the Channel. This second edition, however, is nothing more than a reprint; there is no presentation of new facts and no amendment of old conclusions.

M. Boverat divides his study into three parts. The first, which takes up more than half the book, deals with the history and actual exploitation of English municipal services, including not only water supply, lighting, transportation and telephone service, but workingmen's dwellings, baths and washhouses, abattoirs, markets and cemeteries. The second discusses the policy of the city towards its employees, and the third treats of local finance in its relation to municipal trading.

Now the question whether the English boroughs have, on the whole, gained any considerable balance of advantage from their numerous experiments in the domain of public operation is one which certainly affords fair ground for honest differences of opinion. This, however, is not M. Boverat's attitude. To his mind the evidence is all on the one side, and his verdict accordingly carries no recommendation of leniency towards those who think otherwise. Municipal trading he regards as a flat failure everywhere and in all its branches. Neither in its economic, social or political results has it demonstrated anything other than "the complete incapacity of the state and its municipalities in commercial undertakings."

It goes without saying, of course, that a study carried through in any such dogmatic frame of mind can promise little in the way of usefulness to serious students of municipal problems. Yet the author's bias might be in part condoned if he had deigned to give us anything more than the hackneyed data of a dozen years ago in support of his conclusions. This, however, he has not done. His statistics are in the main taken from the parliamentary reports of 1900 and 1903, or from official publications of only a slightly later date. The quotations are almost wholly out of the mouths of those who appeared before parliamentary committees as avowed opponents of public ownership when such matters were being threshed out a decade or more ago. The book contains no figures or facts of any consequence on municipal trading in England since 1906. The voluminous reports of the National Civic Federation, issued during the years 1907–1908, have been altogether ignored; they are not even mentioned in the bibliography. The author has no doubt expended a great deal of labor in the preparation of this monograph, but the outcome is far from being commensurate with his industry.

WILLIAM BENNETT MUNRO.

Les Partis Politiques sous la III^e^ République: Doctrine et Programme—Organisation et Tactique, d'aprés les Derniers Congrès. By LÉON JACQUES. (Paris: Recueil Sirey, 1913. Pp. xvi, 541.)

Few things are more puzzling to an American student of government than the organization and methods of political parties on the continent of Europe. This is due partly to the multiplicity of their number and partly to the absence of clearly differentiated lines of separation such as are found in countries where the two-party system prevails. In France, especially, the nature of the party system almost defies the power of comprehension. There, parties come into existence and disappear with kaleidoscopic rapidity; in their place new ones are formed with different names but professing substantially the same principles; there one finds conservatives and radicals of many shades, reactionaries, nationalists, progressists, union republicans, *gauches républicaines, unions démocratiques, gauches democratiques, centres gauches, gauches radicales, gauches radicales socialistes,* radicals, radical socialists, socialists, independents, independent socialists, socialists unifiés and numerous others. Since the writing of M. Jacques' treatise, another addition has been made to the already long list: M. Briand's *fédération des gauches,* formed in December last. Parties in

France shade off into one another in such fashion that not even the French themselves are able to distinguish between them; what is considered radical in Calvados or Normandy is regarded as conservative in the Seine; the difficulty of comprehension is further increased by the existence of numerous groups and politico-social organizations that are sometimes classed as political parties and sometimes not. Finally, the lack of a scientific literature on the subject has still further added to the difficulty of the student who seeks information concerning their organization and principles.

It is somewhat singular that heretofore the French political writers in their treatises and in their periodicals have almost entirely ignored the subject of political parties. Aside from Laboulaye's *Le Parti Liberale*, a small book published in 1863, a series of more or less popular monographs on the socialist parties prepared under the editorship of Alexander Zevaes (Marcel Rivière 1910–1911), a collection of articles in the *Revue Hebdomadaire* for 1910, and an essay by M. Lagardelle published in the *Zeitschrift für Politik* last year, there has been little discussion of French parties by French writers.

In the book under review, we have the first serious attempt that has been made to present a comprehensive and scientific study of the history, organization, doctrines and methods of the French parties. It was prepared as a thesis in the University of Paris law school under the direction of Professor Larnaude, but in scope and character, it is far above the average French doctor's dissertation. Nowhere else is it possible to find such a wealth of information regarding every phase of the multifarious parties and groups with which France is afflicted, and it, therefore, meets a long felt need.

It is impossible in the brief compass of this review to analyze a treatise so comprehensive in scope and dealing with so many organizations. It must, therefore, suffice to describe, in a very general way, the character of the book. After some preliminary observations on political parties in general, the author proceeds to sketch the history of political parties in the national assembly of 1871–1876—the Legitimists, the Orleanists, the Bonapartists, the Catholic party, the left center, the Republican party, and others of less importance. He next considers in turn what he calls the great parties of today: the Royalists, the Monarchists, the Bonapartists, the Progressists, the *Parti républican radical et radical socialiste* and the Socialist unifiés. In a succeeding book, he takes up what he calls the secondary or intermediate parties; the Conservatives,

the *Plébiscitiares*, the *Action libérale populaire*, the *Parti republicain démocratique*, the *Parti républicain socialiste* and the rest.

In connection with the study of each party, he discusses such matters as doctrines, organization, methods and strength both in the country and the chambers. An important contribution is his discussion of the party press, which plays a greater rôle in French political life than does the American or English press. In the appendix is to be found a collection of party platforms ("programmes" they are called in France) together with the statutes of a number of the more important parties (it will be remembered that in France each political party is required by law to have a body of statutes and to file these with the prefect). As I have said, M. Jacques' treatise is the first of its kind, and it is a work which bears the earmarks of indefatigable research, scholarship and good judgment. As such, it will be of great value to students of French politics.

JAMES W. GARNER.

The Civil Service of Great Britain. By ROBERT MOSES, Ph.D. Studies in History, Economics and Public Law. Vol. LVII, No. 1. (New York: Columbia University Press, 1914. Pp. 324.)

It is a curious fact that both of the two histories of the civil service of Great Britain have been written by Americans. Both were undertaken with the idea of holding up the British civil service as a model for the United States to follow, although the particular lesson to be inculcated is very different in the case of this new study by Dr. Moses, from that urged by Mr. Dorman B. Eaton in his volume published over thirty years ago. Mr. Eaton wrote his book as a report of his mission to England, where he had been sent by President Hayes when the reform of the American civil service and the abolition of the spoils system were being agitated. Mr. Eaton carried the history of the British civil service from the Norman Conquest to the end of the seventies of last century. Dr. Moses in his new volume is concerned with the more recent history of the civil service, and mainly with the classification into two divisions, and the practical reservation of the higher division for men who have been educated at the older universities. He begins his story in 1853, and reviews the changes which substituted competition for patronage, and swept away the many idle, incapable and unprofitable servants with which the service had been loaded.

The classification of the civil service—the creation of a first division with much higher salaries, the examinations for which were arranged with a view to attract university graduates; and a second division with lower pay, limited prospects of advancement, and more routine duties—was effected by means of an order in council issued in 1870. Dr. Moses describes the system, which has been in operation with modifications since that date, with much sympathy; though he relates with great fairness the history of the discontent which has attended the division, and the many attempts that have been made to democratize the whole of the British civil service, and especially to remove the hard and fast separation between class I and class II. In summarizing the probable report of the royal commission on the civil service, which was still engaged in investigation when the volume was written, Dr. Moses plainly sets out that while the first division with its high salaries and its definite inducements to university men is needed, there ought to be more opportunity for promotion from the second division; that the examinations for class I should be so modified as to permit of fair competition for the men from the newer universities—London, Leeds, Manchester, Birmingham, etc.—as well as for those from Oxford and Cambridge; and that the examinations for the second division should be so arranged as to throw the service open to boys from the free schools, instead of, as at present, making these examinations possible only to pupils who have attended grammar and other schools where fees are paid for tuition. This much of further democratization Dr. Moses allows is needed; but he emphasizes again and again the benefit of the British civil service, as compared with the American civil service, which is due to the enlistment of men of the highest attainments in university work. In the last chapter Dr. Moses makes a detailed comparison between the English and the American civil service. He asserts that, as yet, in spite of the classified list there is no open competition for the United States civil service; and he pleads for an improvement in the whole federal service by the abolition of apportionment of the number of appointments to the states; by fixed salaries to be offered for each position, instead of the acceptance of bids from candidates; by doing away with the limitations on competition; by raising the standard of the examinations; and, by the offer of higher salaries and better opportunities for promotion, inducing men of university education to enter and remain in the service.

A. G. P.

The Supreme Court of the United States and its Appellate Power under the Constitution. By EDWIN COUNTRYMAN. (Albany: Matthew Bender and Company, 1913. Pp. xxi, 282.)

In his recent volume on *The Courts, the Constitution and Parties* Professor McLaughlin argues that the present position of the judiciary in relation to the Constitution is due in part to *accommodation* for reasons of expediency by the political departments in the judicial view of the Constitution. In the volume under review Judge Countryman shows that what *accommodation* there has been is from the side of the courts, and this accommodation he makes it his business to criticize. Adhering strictly to the doctrine that the Constitution is *law* and *supreme* law and that the judicial power of the United States is vested by the Constitution in the courts described in Article III, he is able to attack with force and considerable success the doctrine of the Court in Durousseau vs. United States (6 Cr. 308), American Insurance Company vs. Cantor (1 Pet. 517), *Ex parte* McArdle (6 Wall. 318, 7 Wall. 506), Mississippi vs. Johnson (4 Wall. 475), Georgia vs. Stanton (6 Wall. 50), Hans vs. Louisiana (134 U. S. 1), Cunningham vs. Macon Railway Company (109 U. S. 451), the Insular Cases (182 U. S.), and Pacific Telephone Company vs. Oregon (223 U. S. 118). Of course it is impossible to consider the author's argument in detail in these pages but his leading conclusions may be given briefly: (1) The appellate as well as the original jurisdiction of the Supreme Court vests in it automatically; wherefore legislation to that end by Congress is unnecessary (chapters II and III); (2) All territory within the United States is of the United States, and all courts established by congress are within the description and provisions of Article III (chapter IV); (3) The judicial power of the United States extends to all constitutional questions arising from acts of a governmental character from which injury to individuals is claimed to have resulted; wherefore there is no such thing as a "political question" which may not become a judicial question (chapter V and VI); (4) There is constitutionally no such thing as sovereign or official immunity from judicial process in the United States, save that established by the eleventh amendment, which ought to be construed as narrowly as possible, and in the case of official acts "the true distinction is between the exercise of official discretion and official action in excess of executive power" (chapter V, p. 243).

Incidentally Judge Countryman shows that the Insular Cases (including the Mankichi and Dorr Cases) are authority only for the precise points determined in them and can be cited for no general principles of

constitutional law (pp. 174–186). He also shows that the tradition that Marshall issued the *subpoena duces tecum* in Burr's case for the President inadvertently, and that Jefferson entirely disregarded it, is pure myth. The Chief Justice considered the fundamental question involved at great length and the President, though he did not respond in person, forwarded the required document (pp. 243–244 and footnote). Finally the doctrine of the non-suability of the President, erected by Professor Burgess on "sound political science," is made mince-meat of (pp. 229–251).

Aside from the rather long drawn-out first chapter, in which the author elaborates a number of harmless but rather out of date crochets, the argument is extremely able and worthy the attention of all students of the history of constitutional law.

EDWARD S. CORWIN.

Lord Lyons: A Record of British Diplomacy. By LORD NEWTON. Two volumes. (New York: Longmans, Green and Company, 1913. Pp. x, 388; viii, 447.)

This is the authorized life of Lord Lyons, prepared by one who was for years closely associated with him, and who of course had access to his private and official papers. It appears almost simultaneously with Maxwell's *Clarendon*, and the two will fill an important place on the library shelf by the side of Walpole's *Russell* and Morley's *Gladstone*.

Lord Lyons is of special interest to Americans on account of the fact that he was the British representative at Washington during the entire period of the Civil War. Prior to his appointment in 1859 as minister to the United States he had served in minor diplomatic capacities at Athens, Rome and Naples, and as minister to Florence. In 1865 he was forced by ill health to leave his post at Washington, and after a short rest was sent to Constantinople. In 1867 he was transferred to Paris, then the highest post in the British diplomatic service, and there he remained for twenty years, his retirement in 1887 being followed a few weeks later by his death. He thus held the most important diplomatic posts in the service of his country during two foreign wars, the American and the Franco-Prussian.

While he expressed his opinions freely in his despatches to the government, he was singularly cautious about public utterances. He boasted in after-life that during his five years' residence in Washington he had "never taken a drink or made a speech," a remarkable record for a

bachelor. He was the type of diplomat who had no opinions, so far as the general public or even his more intimate associates could gather, except those of his government. His career was so utterly devoid of anything in the nature of an indiscretion that his biography is almost lacking in some of the essential elements of human interest. In the trying weeks following the capture of Mason and Slidell he maintained absolute silence, and no one could extract from him the slightest expression of opinion as to what action his government would be likely to take. When Russell's despatch finally arrived, Lyons gently broke the force of the blow by communicating its contents orally and with great tact to Seward. The firmness with which he then officially communicated the despatch left no doubt in Seward's mind as to the real intentions of England.

Lord Newton was connected for years with the Paris embassy and was naturally interested in that period of Lord Lyon's life. While the chapters dealing with his residence in Washington (2, 3 and 4 of volume 1) contain some important material, they are not as full as the American student would wish or expect. Nevertheless, the volume is a distinct addition to the diplomatic history of the Civil War.

JOHN H. LATANÉ.

The Fourteenth Amendment and the States. By CHARLES WALLACE COLLINS. (Boston: Little, Brown, and Company, 1912. Pp. 220.)

"The true nature of the fourteenth amendment," according to the author of this book, "is very little known." To discover its real bearing and to make known its true import is the object of the book. The author's conclusions may be abridged and summarized as follows: The amendment is of no practical benefit to the negro race for whose protection it was adopted. A constitutional provision designed as the Negro's charter of liberties has become a refuge of accumulated and organized capital. It has introduced confusion into our legal system and threatens to over-burden the supreme court with matters that should come within the police powers of the States.

It is easy to read this book with appreciation of its originality and suggestiveness but not with entire agreement with all of the writer's conclusions. It may readily be acknowledged that the amendment has not secured to the Negro *political* equality with the white man, but there is no room for doubt that it is a very real and essential guarantee against

legal impairment of his *civil* rights. Without the fourteenth amendment there is no guarantee that state or city legislatures will not reënact laws such as existed in a number of States prior to the adoption of the amendment, denying to negroes freedom to buy or sell, freedom to pursue a trade or calling, freedom to own, inherit and transmit property and to bear testimony in courts of law in defense of themselves or their property. In the case of Yick Wo vs. Hopkins, 118 W. S., 356, the supreme court invalidated under the fourteenth amendment a city ordinance which discriminated against the Chinese in the laundry business. It is unbelievable that state legislatures and city councils do not recognize in this interpretation of the fourteenth amendment a clear limitation upon them in the enactment of laws affecting the negro race and that without a recognition of these limitations the civil rights of the negroes would in many localities be jeopardized. For this reason we cannot agree with the writer that repeal of the amendment would be desirable if it were practicable.

From the character of litigation under the amendment, so well analyzed in this volume, it appears that there is ground for the author's contention that corporations are the greatest beneficiaries of actual judicial interference, under the amendment, with the acts of the States. Of the 604 such cases before the supreme court up to 1912, 312 were appealed by corporations, 264 by white persons and 28 by negroes. Although we are not convinced that the use being made of the fourteenth amendment is wholly bad we are in sympathy with the efforts of the writer to find a plan by which corporations may be prevented from abusing the right to appeal under the amendment by appealing cases in which the greatest success hoped for is delay in the execution of just judgments of state courts. As a remedy for this abuse and as a means of lessening the growing burden of the supreme court the author proposes that congress limit the appellate jurisdiction of the supreme court in cases under the amendment to those cases where the state court of final jurisdiction is divided on the question and provide that no state law or procedure shall be declared unconstitutional by the supreme court of the United States as repugnant to the provisions of the fourteenth amendment except by unanimous opinion of the court.

Not the least valuable feature of this work are five charts accompanying the chapters and six appendices. Appendix E, which is a chronological table of cases decided by the Supreme Court of the United States under the Fourteenth Amendment, is of special value. The book as a whole deserves praise for pointing out many hitherto unobserved facts concern-

ing the judicial history of the amendment, and for discovering abuses and suggesting remedies that challenge serious consideration.

JOHN H. RUSSELL.

National Supremacy: Treaty Power versus State Power. By E. S. CORWIN. (New York: Henry Holt and Company, 1913. Pp. 322.)

"National Supremacy," the title of Mr. Corwin's book on the treaty power, is somewhat misleading, for as the author states in his preface, the main purpose of the study is to investigate the relation of the national treaty power to state power. Yet, he would seem to justify his very broad title by explaining that an opportunity was afforded to sketch the general history of the doctrine of national supremacy, that could hardly be put aside. Mr. Corwin has utilized this opportunity in an admirable way, and it may truthfully be said of his treatise that few books of anything like the same size afford such an excellent compendium of the history and growth of our constitutional law. One cannot read this little volume carefully without obtaining much valuable knowledge, not only of the treaty power, but of the commerce clause, of the national taxing power, and in fact, of all the powers of the national government in their relation to the powers of the States.

The arrangement of the book suffers perhaps a little from lack of conciseness, but, again, this is justified when we consider the scope of the thesis, and the historical treatment that is necessary. The book evidences great research and considerable novelty of both thought and expression. Needless to say, the author is extremely federalistic in his viewpoint. One need read but a few pages of the first chapter, to realize that the supremacy of treaties is to be emphatically upheld throughout the book. This being so, the author very properly does not attempt to lay down definite limitations upon the ever-increasing scope of the treaty power, but, subject to some few limitations which are known to exist by reason of judicial precedent—such as that new territory may be acquired, but not brought into the Union, by treaty, and that a treaty may not appropriate money, or bind congress indefeasibly—he argues for unlimited power. "The treaty power is not defined and controlled by the reserved powers of the States, but these are often defined and controlled by it," says Mr. Corwin. "The term 'reserved powers of the States' can *never* be used with propriety as indicating a *restriction* upon the powers assigned by the constitution to the national government.

It *can* be used with *logical*, though hardly with *rhetorical*, propriety to indicate the obvious fact that the powers of congress, fairly construed, do not extend to all the recognized ends of legislation, but that many of these, simply by virtue of this plain inadequacy of the national legislative powers for them, fall exclusively to the States.'

That there are no reserved powers of the States against *any* power of the United States is of course, true. But this is not to say that the national legislative powers may themselves override the reserved powers of the States, because the latter within their given spheres are just as inviolable as are the former. The dual nature of our government is ever present to be reckoned with. Thus, Mr. Corwin would seem to be pressing his federalistic doctrine too far, when for example, in considering those indestructible precedents in our constitutional law, the cases of McCulloch v. Maryland and Collector v. Day, he asks the question, "If the national government's implied power to charter banks is paramount to the States' power of taxation, why, then, should not its express power of taxation be paramount to any state power whatever?" The obvious answer, of course, is that *no* implied or expressed powers, no matter where vested, can operate upon things which are not properly within their sphere of operation. Strictly state instrumentalities are no more within the sphere of operation of national taxation than is intra-state commerce within the sphere of operation of the commerce clause of the federal constitution. The conception of a dominant national, and a servient state power is incompatible with our form of government, in relation to all matters control over which is reserved to the States, because by this reservation the state power is plenary. But there is, necessarily, a difference between the treaty power, and the legislative powers of the national government, with reference to state power, on account of the fact that no questions of co-equal rights arise under the treaty power. It must be both exclusive and supreme because it is a power to deal with *parties*, while all other powers granted to the national government, or reserved to the States, are powers to deal with *subjects*. From the very nature of international negotiations, it is impossible to express definitely the limitations of the subject matter of such negotiations. The most that can be said is that a treaty must only contain provisions which in the usual and normal intercourse of nations may properly become the subject of treaties. International law is a progressive science, and whereas to have provided by treaty for co-education of whites and Japanese, for example, might have seemed improper one hundred years ago, we cannot feel quite the same today.

By their adoption of the federal constitution, the individual States renounced finally their individual sovereignty in all foreign relations, and intrusted this sovereignty to the national government. Nor is the scope of the treaty power lessened by the fact that under our constitution, treaties stand no higher than acts of congress, and may therefore, be abrogated by congress, should it see fit to do so. For it is one thing to say that a nation may not be able *to fulfill* its contracts with other nations and quite a different thing to say that it lacks the inherent power *to make* those contracts. In short, there is no provision in the federal constitution parallel in scope, because none is parallel in purpose, with the provision intrusting the President and the senate with the exclusive power of international negotiation. Therefore, a comparison of the grant of this power with the grant of other powers to the national government is generally futile and academic, to say the least. For example, the treaty power resting upon grant from the constitution, it is naturally to be supposed that, like the other powers granted to the national government by that instrument, it may not violate the fifth amendment. Yet, national preservation being the greatest objective of the treaty power, we cannot say that, as a war measure, a treaty might not do things which, just as in the case of Lincoln's emancipation proclamation, could not be justified on other grounds.

Mr. Corwin's book is a valuable addition to our constitutional literature, and must rank, with Mr. Burr's recent admirable work, far in advance, both as to substance and form, of all other treatises on the subject.

WILLIAM F. COLEMAN.

Problems in Political Evolution. By RAYMOND GARFIELD GETTELL. (Boston: Ginn and Company, 1914. Pp. 400.)

The author characterizes his book in these sentences taken from the preface: "This volume aims to settle no controverted questions. Its province is to state problems, not to solve them. Its purpose is to show the relativity of political methods and the multiplicity of forces involved in each phase of political evolution; . . . . Such a study necessitates numerous broad generalizations, few of which are entirely above criticism."

Within these frankly admitted limitations the author has certainly accomplished what he set out to do. His statements, while comprehensive and somewhat attenuated in spots, are readily understood, for his treatment is general and even elementary throughout. The meta-

physical and speculative aspects of the subject are carefully avoided. The book is evidently based on a careful reading and analysis of the best literature on the topics treated, as the ample references and footnotes indicate. The book makes no striking contribution. It collates and makes more accessible the best thought on the subject in a judicious, impartial and acceptable manner. There is no attempt made to treat exhaustively, and in a fresh and vigorous manner, some selected problems of political evolution, as the title of the book might suggest. It is however, a scholarly and a thoroughly creditable piece of work, which will serve a useful purpose in disseminating the available information and in promoting sane and well balanced thinking on some problems of the state.

The book is divided into thirteen chapters. The first two treat of political evolution in general, touching briefly the physical environment, social, economic and racial factors, the influence of great men, religion, growth of knowledge, political theory, and the social processes of conflict, coöperative and imitative. Chapter three considers the elements of the state under: population, territory, government, sovereignty and law. Chapter four is a brief discussion of the origin of the state, including a reference to kinship, religion, industry, war, stagnation and progress, and the origin of modern states. Chapter five deals with the state in its relation to the family, church, and to industrial, military and political organization. Chapter six takes up the composition of the state, essentially the question of nationality and citizenship. Chapter seven considers the forms of the state under community state, world state and national state. Chapter eight treats of authority within the state, mainly the evolution of civil and political liberty. Chapter nine is a discussion of the scope of state activities, confined mainly to an examination of the general aspects of individualism and socialism. Chapters ten and eleven deal with international relations, twelve with the purpose of the state and thirteen with political conditions and tendencies.

W. A. SCHAPER.

Annals and Memoirs of the Court of Peking. From the 16th to the 20th Century. By E. BACKHOUSE and J. O. P. BLAND. (Boston and New York: Houghton Mifflin Company, 1914. Pp. 531.)

There is abundant instruction in such an assemblage of documents as Mr. Backhouse has translated and Mr. Bland has discussed for the benefit of English readers in their sequel to the Life of the "Old Buddha."

To the student of institutions its chief interest lies in the fact that it reveals the actual operation of an antique autocracy and presents a survival in modern times of a type of government exactly similar to that of ancient Persia. No competent authority, indeed, has ever remarked the striking similarity between the Achaemenid system of satrap rule and that of China since the Ch'in period, or shown that this was probably Persia's most notable contribution to the culture of the further east. In its elasticity, its religious toleration and its comparative freedom from the centrifugal tendencies of feudalism lay the causes of its long endurance; it was rather better than any governmental organization preceding it, and on the whole, despite the destruction following each dynastic change, the people of China may be said to have suffered less unhappiness than those of Europe during the feudal period. The blight of despotism is not inefficiency, it rests in its inability to escape its parasites or to instruct and elevate its subjects. China has often been effectively controlled by great rulers but the leaven of democracy, which germinated there as early as it did in Greece, has never been allowed to evolve from the communal group the type of representative government that after centuries of turmoil has ultimately prevailed in the West. She remains —or remained until yesterday— the modern instance of arrested development among the nations of the world. Democracy has its ills, but no one need despair who is able to watch the worse ills of despotism.

Ideas as familiar to thoughtful persons as these may easily be called commonplace, yet they ought to be so often repeated that the unthinking may at last understand. China is already in the throes of a reaction against the republican enthusiasts who brought about the downfall of the Manchu dynasty with proclamations of a new gospel that won the sympathy of all western peoples. The propaganda served as well as any other instrument for the uprooting of a family that had lost its ability to rule; when, however, the "Young China" apostles of the new doctrine passed from the work of destruction to that of construction they met with almost no response from the nation. The parasites had effectually killed the source of authority, but the sources of reform had never been quickened to contrive a substitute for that authority which would not in time repeat the vicious circle of new parasites and a new revolution. The revolutionists attempted the impossible. The influences of twenty centuries of autocracy cannot be forgotten in a night, or a republic established on the morrow that will win the support of millions who believe that government is a function belonging by divine right to a group of men entirely removed from the common folk.

The work of Messrs. Backhouse and Bland affords illuminating instances of the actual operation of an oriental despotism at its best and its worst. It is not a comprehensive history but consists of excerpts from Chinese chronicles illustrating the reigns of three Ming monarchs and of all the emperors of the Manchu dynasty. For intimate interest it may be compared to the books of Esther and Daniel, or to the famous *Ain-i-Akbari* of the Great Mogul, and on this score it deserves a place in any general library of works on modern Asia. Apart from its real charm as a collection of amazing stories it has special significance to the student of politics. Most of the chapters are devoted to the conquest and careers of the Manchus, but enough is told of the Ming emperors to show that their court was the prototype of their foreign supplanters and that the loss of their throne was due entirely to the results of mismanagement and eunuch control. The Tartars who replaced them were no better as a race, they had no institutions of their own superior to those of the Chinese; they only succeeded at the end of twenty years of fighting because the defeated dynasty was unable to produce a single scion of the line who did not prove himself utterly unworthy of the many loyal Chinese who were willing to sacrifice their lives for their loyalty. When their stubborn opposition was fairly overcome the genius of K'anghsi reformed the administration and enormously increased the prestige of the empire by adding Mongolia to his domain. His grandson Ch'ienlung completed his task by the conquest of Tibet and Turkestan, and to these two sovereigns are due the reorganization and solidarity that enabled China to resist the aggressions of Europe in the eighteenth century.

The work of these two emperors shows how rapidly a self-contained domain like that of China can be raised from the demoralization of long continued civil strife to the height of prosperity. With no foreign enemies and no national debt it was a comparatively simple matter for a strong ruler to decree order and compel the solicitude of his officers. The fiber of humanity, however, is unable long to endure the strain of such elevation above the rest of mankind as must needs be implied in a divinely established sovereignty. The quality of jealousy, which the historian Mill described as the peculiar characteristic of oriental monarchs, vitiates the best of them and affords their unscrupulous courtiers an easy means of displacing their trustworthy servants and of playing havoc with every attempt at reform. The tragedy of the Barmekides under Harun ar-Rashid has been repeated scores of times in every great Asiatic empire where fortunes amassed by favorites have become the certain instruments of their own destruction. The process in China has always

been somewhat restricted by the influences of the civil service examination system, but even here personal shrewdness is able to evade this barrier to the vulgar parvenu, as in the case of the notorious Ho Shen, a Manchu sergeant of Ch'ienlung's palace guard, who was able to accumulate a fortune of $350,000,000. Worst of all as instruments of corruption were the eunuchs because they had nothing to lose. Every precaution of the early Manchu emperors against their control was swept to the winds under the decadents during whose weak reigns the palace became the same sort of conservatory of vice that marked the dramatic finale of the dishonored Mings. During the last miserable century of Manchu rule China, outside of the palace, has produced a number of really patriotic and able men; but the system is stronger than any individual; nothing in the country could escape the paralyzing influence of the gang who controlled the Master; and beneath the system was the passive multitude unaccustomed to share in politics, taught to obey a despot who was Heaven's vicegerent, and unaware of the notion of a government responsible to the governed. Under the pressure of new financial burdens and the dangers of foreign intervention China will learn her lesson of emancipation, but a new generation must arise before her people may be expected to dismiss their old conceptions of rulership and understand the meaning of the word republic.

F. W. WILLIAMS.

Boycotts and the Labor Struggle: Economic and Legal Aspects. By HARRY W. LAIDLER, with an introduction by Henry R. Seager. (New York: John Lane Company, 1914. Pp. 488.)

The law of boycotts in the United States presents anomalous aspects in our national jurisprudence. The difficulty of reconciling with logic or legal principle the reasoning whereby our courts hold unlawful the mere concerted withdrawal of patronage from a given person and those who deal with him suggests the unlikelihood that the problem can be satisfactorily settled by the methods of the criminal law, and the consequent necessity of a new avenue of approach.

The author of the present treatise accordingly proposes an investigation of the boycott in its past and present operation, effect and tendencies, as the basis of a decision as to what its fate shall be.

To this end he first deals with the origin and history of the boycott and its actual use by labor combinations. A discussion of legal aspects follows. There is a full collection, analysis and comparison of state and

federal statutes affecting the boycott, and the reasons given by courts and writers why it should be held legal or unlawful, as the case might be. The author concludes that the great weight of judicial authority in this country at the present time is against the legality of the boycott—certainly in its secondary and compound forms. The law is otherwise in England and the continental countries of Europe. Attempts have been, and are still being, made to legalize it by state and federal statute, and the general tendency seems to be towards legalization.

The author next considers the social and economic reasons for and against the boycott, and in conclusion states his belief that peaceable boycotting in all its forms should be fully legalized; that it will not be abused in the majority of cases, and that its advantages to labor and to society on the whole greatly outweigh its possible disadvantages. The argument on this subject is suggestive, but will not entirely silence the critics who believe that the boycott is wrong in itself and pernicious in its effect on society and labor. These critics will say that the alleged wrongs of labor and the unfair methods of employers should be corrected by lawful means, and that they do not justify wrongful methods in retaliation. Nevertheless, the author approaches the problem from the standpoint that contains the best promise of permanent adjustment. Much of his material is new and interesting. His treatment is clear and well balanced. On the whole the volume is a distinct contribution to the subject with which it deals.

J. WALLACE BRYAN.

Unpopular Government in the United States. BY ALBERT M. KALES. (Chicago: University Press, 1914. Pp. 263.)

Professor Kales had the happy idea of treating our actual political system from the personal experience of the citizen, thus reaching his conclusions upon constitutional values by induction. He starts with his own case—"one of about two thousand voters in a township" called upon to elect sundry officers in township, county, state and nation. He gives a complete schedule of the tasks put upon the voter, with facsimiles of the ballots he must use. This cold, systematic presentation of the facts makes the most comprehensive exhibition possible of the absurdity of the system of filling executive and judicial positions by popular election. Professor Kales demonstrates that the boss and the ring are the proper and inevitable concomitants of the system, and that nothing short of radical change of system will bring the government under popular

control. Professor Kales' examination includes the initiative, referendum and recall, upon which his comments are penetrating and judicious.

The work throughout displays exceptional powers of political insight and constitutional discernment.

HENRY J. FORD.

The Americans in the Philippines. By JAMES A. LE ROY with an introduction by William Howard Taft. (Boston and New York: Houghton Mifflin Company, 1914. 2 volumes. Pp. xi, 424, 350.)

A pathetic interest attaches to this work in that it represents all that the author was able to complete of the history he had planned, before he died of an illness contracted during his research. A graduate of the University of Michigan he went to the Philippines with the second Philippine commission as secretary to Commissioner Worcester. He devoted himself to study of the place and of the people, and learned something of the local dialects. He produced a number of magazine articles on Philippine conditions and also a volume entitled "Philippine Life in Town and County" which is now in its third edition. He planned a history for which he assiduously collected materials, but in the midst of his labors tuberculosis developed and he had to leave the Islands. Eventually he obtained the position of United States Consul at Durango, Mexico, and there he wrote all of his history that he lived to complete. Voluminous as is that portion, it comprises only about one-half of the work as he had planned it; but it covers the history of the Islands under Spanish rule and tells the story of the American occupation and of the conflict with the native Philippine government. The narrative ends with an account of the situation that confronted the American administrators in setting about the task of organizing civil government, after the capture of Aguinaldo.

Although it appears that the author regarded the matter contained in the two volumes published as preliminary to his main purpose, and the narrative ends just when he has reached the point when he could speak from personal knowledge and experience, yet he has produced a work of great value. Much as it is to be deplored that he did not live to finish the work as he had planned, the period he was able to cover is just that of which a full and authoritative account was most needed. Material for a history of American rule, from the period in which civil government was established, is abundant and readily accessible. There is more pressing

need for a complete and authentic account of American relations with the Filipino leaders at the outset and of the circumstances that led on to a war that cost the United States over two hundred million dollars. This account Mr. Le Roy's history supplies. He has taken great pains to collect all the facts and to make a fair and intelligent presentation of them. Mr. Le Roy's own conclusions may at times seem open to question, but he makes such a complete statement of the case that the reader is in a position to reach an independent judgment. Mr. Le Roy's own opinions reveal prejudices and limitations that impair the value of his criticism. For instance he mentions that the constitution framed by the Filipinos at Malolos provided for the election of the president by the congress, "thus violating at the very outset the principle of mutual independence of the three branches of government." Thus the Filipino constitution is condemned off-hand because it collides with Mr. Le Roy's traditional attachment to the principle of the separation of the powers. But in Switzerland the president is elected by congress, and so it cannot be said that the Filipinos proposed any remarkable or absurd arrangement. However, it is a fact of our own constitutional history that the original design was to provide for the election of the president by congress and that this design was abandoned not on grounds of constitutional propriety, but as an incident of the compromises made to placate the small states. So far from being a blunder, there may be reasons for holding that the Filipino plan was a sensible arrangement and that to force upon them an imitation of the system of presidential election that has grown up in the United States more by accident than intention will doom them to revolutionary turmoil.

The opinion is prevalent among Europeans in the East that the costly war waged by the United States in the Philippines was quite unnecessary and could have been readily avoided; that if the United States had been willing and able to recognize and use native authority, little practical difficulty would have been experienced in controlling governmental policy. Mr. Le Roy's minute account of the events leading up to the outbreak of hostilities tends to confirm this opinion while illuminating the causes why the opportunity was not utilized. The root of trouble was the inexperience of American statesmanship with such a situation and consequent inability to frame a rational policy. The result was that we drifted into treatment of our Filipino allies that constitutes the most mortifying chapter of our national history; but it is one that should be carefully studied to avoid like incompetence and mismanagement in future emergencies.

HENRY J. FORD.

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